CLERK'S COPY 240718
142

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 45

JOSEPH D. McGOLDRICK, COMPTROLLER OF THE CITY OF NEW YORK, PETITIONER,

vs.

FELT & TARRANT MFG. CO.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED MAY 8, 1939.

CERTIORARI GRANTED JUNE 5, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 944

JOSEPH D. McGOLDRICK, COMPTROLLER OF THE CITY OF NEW YORK, PETITIONER,

vs.

FELT & TARRANT MFG. CO.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

INDEX.

	Original	Print
Record on appeal to Court of Appeals of New York	1	1
Statement under Rule 234	1	1
Order of certiorari	3	2
Petition	6	3
Exhibit "A"—Letter of protest	15	8
Exhibit "B"—Application for review of determination	17	10
Exhibit "C"—Application and claim for refund	18	10
Comptroller's return to order of certiorari	19	11
Documents annexed to comptroller's return to order of certiorari:		
No. 1—Return of receipts from sales and services for the period from December 10, 1934, to February 28, 1935	23	14
No. 2—Return of receipts from sales and services for the period from March 1, 1935, to May 31, 1935	24	14
No. 3—Return of receipts from sales and services for the period from June 1, 1935, to August 31, 1935	25	14

Record on appeal to Court of Appeals of New York—Continued.

	Original	Print
Documents annexed to comptroller's return to order of certiorari—Continued:		
No. 4—Determination of the Comptroller of December 16, 1935, with annexed exhibits	26	15
No. 5—Letter, dated January 9, 1936, requesting a hearing	35	21
No. 6—Letter, dated January 15, 1936, requesting a hearing	36	22
No. 7—Letter, dated January 22, 1936, setting January 29, 1936, for hearing	37	23
No. 8—Minutes of testimony taken at hearing held on April 29, 1936	38	24
Taxpayer's Exhibit 1—Typical Order Blank	75	53
Taxpayer's Exhibit 2—Sub-Solicitor's Agreement	77	54
Taxpayer's Exhibit A—Typical Shipping Order and Envelope	84	58
Taxpayer's Exhibit B—Typical Invoice and five carbon copy records	85	59
Letter, dated May 4, 1936, from the Department of State	87	60
No. 9—Determination of the Comptroller, dated June 24, 1936	88	60
No. 10—Letter, dated July 7, 1936, to the Department of Finance	91	62
No. 11—Letter, dated July 20, 1936, to Felt & Tarrant Mfg. Co.	93	63
No. 12—Report after audit with annexed exhibits	94	64
No. 13—Letter, dated November 20, 1936, from Felt & Tarrant Mfg. Co. to Deputy Comptroller	107	71
No. 14—Determination of the Comptroller, dated February 13, 1937	110	72
No. 15—Letter, dated February 18, 1937, from Felt & Tarrant Mfg. Co. to City Collector, transmitting check	112	73
No. 16—Letter, dated March 2, 1937, from Felt & Tarrant Mfg. Co. to Comptroller	112	74
No. 17—Letter, dated March 2, 1937, from Felt & Tarrant Mfg. Co. to City Collector	112	74
No. 18—Letter, dated March 4, 1937, from Comptroller to Felt & Tarrant Mfg. Co.	113	74
Stipulation waiving certification	114	75
Notice of appeal to Court of Appeals	115	75
Order of Appellate Division	117	76
Judgment entered on order of Appellate Division	119	77
Opinion, Glennon, J., Appellate Division	121	78
Waiver of certification	124	80
Notice of motion for reargument and to amend opinion and remittitur of Court of Appeals	125	81
Affidavit of Wm. C. Chanler	128	82
Memorandum in support of motion	132	85

	Original	Print
Record on appeal to Court of Appeals of New York—Continued.		
Opinion per curiam, Court of Appeals	141	90
Remittitur of Court of Appeals	143	90
Order of Court of Appeals denying motion for reargument and amending remittitur	147	92
Order on remittitur	148	93
Judgment on remittitur	151	94
Order on order amending remittitur	153	95
Clerk's certificate ..... (omitted in printing)	155	
Orders extending time within which to apply for writs of certiorari	156	96
Order allowing certiorari	158	98

[fol. 1]

IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

In the Matter of the Application of FELT & TARRANT MFG. Co., Petitioner,

For an Order of Certiorari

against

FRANK J. TAYLOR, Comptroller of the City of New York, Respondent

STATEMENT UNDER RULE 234

This is a certiorari proceeding pursuant to Article 78 of the Civil Practice Act to review a final determination of the Comptroller of the City of New York, dated February 13, 1937, of an application by Felt & Tarrant Mfg. Co. for a review and reconsideration of the taxes assessed and determined against it by the Comptroller of the City of New York pursuant to Local Law #20 of 1934 (published as Local Law #21) as amended by Local Law #24 of the Laws of 1934 (published as Local Law #25), of the City of New York.

The Comptroller determined that Felt & Tarrant Mfg. Co. is liable to pay a tax of $2,587.31 and interest of $535.22, a total of $3,122.53 as a sales tax under Local Law #20, as amended by Local Law #24 of the Laws of 1934 [fol. 2] of the City of New York based on the receipts derived by Felt & Tarrant Mfg. Co. for the period from December 10, 1934 to December 31, 1935.

The Order of Certiorari was signed by Mr. Justice Charles B. McLaughlin on the 10th day of March, 1937, and simultaneously therewith Mr. Justice McLaughlin approved the bond given by Felt & Tarrant Mfg. Co. in the amount of $500.

The Comptroller made his return to the Order of Certiorari on the 15th day of April, 1937.

By stipulation dated June 30, 1938, Joseph D. McGoldrick, Comptroller of The City of New York, was made the defendant in the place of Frank J. Taylor.

Newton K. Fox, 42 Broadway, New York City, appears as attorney for Felt & Tarrant Mfg. Co.

Paul Windels, Corporation Counsel, appeared as attorney for respondent, Frank J. Taylor, Comptroller of the City of New York, but was succeeded by William C. Chanler, the present Corporation Counsel and represents the present Comptroller of The City of New York, Joseph D. McGoldrick.

[fol. 3] In Supreme Court of New York, County of New York, Special Term, Part II

[Title omitted]

Order of Certiorari—March 10, 1937

On the reading and filing the annexed petition of Felt & Tarrant Mfg. Co., verified the 8th day of March, 1937, whereby it appears that Frank J. Taylor, Comptroller of the City of New York, has assessed and collected sales taxes and penalties from the petitioner for the period December 10, 1934 to December 31, 1935, in the sum of $3,122.53, under Section 873 of the Laws of 1934 of the State of New York and under Local Law #20 of 1934, as amended, of the City of New York, and under rules and [fol. 4] regulations that the products sold by the petitioner are subject to the sales tax under said Local Law #20 of 1934, as amended, and has assessed the tax upon the receipts from customers located in New York City.

Now, on motion of Newton K. Fox, Attorney for the petitioner, it is

Ordered that Frank J. Taylor, Comptroller of the City of New York, within 20 days after the service of a certified copy of this order upon him, do certify and return to the Court by filing in the office of the Clerk of the County of New York, at the County Court House, Center and Pearl Streets, in the Borough of Manhattan, City of New York, all rules, regulations and assessments in the premises, together with all proceedings, decisions, rulings and actions in the premises, with the dates thereof respectively and of all and singular the correspondence, evidence, documents, records, exhibits and papers before him touching and concerning the taxation of the sales by petitioner as aforesaid, and whether or not said sales were consummated and made in the City of New York and are taxable under said Local

Law #20 of 1934, as amended, and the reason why said sales are held taxable under said Local Law #20, as amended, and as to whether or not said rulings, regulations and assessments unfairly discriminated against the petitioner, to the end that said decision and action may be reviewed and corrected on the merits by this Court, and any error committed in said rulings, regulations and assessments, may be corrected according to law as to the Court may seem just and proper; and it is further

[fol. 5] Ordered that petitioner file with the Comptroller of the City of New York an undertaking with a Surety Company authorized to do business in the State of New York as surety to be approved by one of the Justices of this Court in the sum of $500 to the effect that if this proceeding be dismissed or the tax confirmed, the petitioner will pay all the costs and charges which may accrue in the prosecution of this proceeding.

And, sufficient reason appearing therefor, it is further

Ordered that notice of application for this order be and it hereby is, in the discretion of the Court, dispensed with.

Enter.

C. B. McL., J. S. C.

[fol. 6] In Supreme Court of New York, New York County

[Same title]

Petition

To the Supreme Court of the State of New York:

The petitioner Felt & Tarrant Mfg. Co. respectfully says:

1. That your petitioner Felt & Tarrant Mfg. Co. at all times hereinafter mentioned was and is a corporation duly organized and existing under the laws of the State of Illinois, having its principal office and place of business at No. 1735 North Paulina Street, City of Chicago, State of Illinois, and is engaged in the business of manufacturing and selling comptometers at said City of Chicago, State of Illinois.

2. That your petitioner has never filed qualifying papers or received authority to do business in the State of New

York, and is not doing business in the City or State of New York.

3. That the respondent Frank J. Taylor is the duly elected qualified and acting Comptroller of the City of New York.

4. That the authority of the City of New York to levy and collect a sales tax is conferred by Chapter 873 of the 1934 Laws of the State of New York, approved August 18, 1934, and that Section 1 thereof provides in part as follows:

"This Act shall not authorize the imposition of a tax on [fol. 7] any transaction originating and/or consummated outside of the territorial limits of any such city, notwithstanding that some act be necessarily performed with respect to such transaction within such limits."

5. That pursuant to Chapter 873 of the laws of 1934 of the State of New York, both branches of the Municipal Assembly of the City of New York passed and the Mayor of the City of New York approved New York City Local Law #20, effective December 5, 1934, as amended by Local Law #24 effective December 28, 1934, commonly known as the sales tax law.

6. That in and by Section 1 of said Local Law #20, as amended, it was provided in part as follows:

"Section 1. Definitions.—When used in this local law:"

"(b) The word 'vendor' means a person selling property or rendering services upon the receipts from which a tax is imposed under section 2 of this local law;"

"(e) The word 'sale' or 'selling' means any transfer of title or possession or both, exchange or barter, license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, and may include the rendering of any service specified in section 2 of this local law;"

[fol. 8] 7. That in and by Section 2 of said Local Law #20, as amended, it was provided in part as follows:

"Section 2. Imposition of tax.—During the period commencing on December tenth, nineteen hundred and thirty-four, and ending on December thirty-first, nineteen hun-

dred and thirty-five, there shall be paid a tax of two per centum upon the amount of the receipts from every sale in the city of New York of:

"(a) Tangible personal property sold at retail except those articles described in schedule 'A' below;"

8. That during the period December 10, 1934 to December 31, 1935, the petitioner made sales of comptometers in interstate commerce to customers located in the City of New York which sales were made under the conditions set forth in Paragraph 9 hereof.

9. During the period December 10, 1934 to December 31, 1935, and prior and subsequent thereto, the petitioner did not maintain in the City or State of New York any manufacturing plant for the manufacture of its products or any warehouse or place from which comptometer machines could be sold to purchasers or at which a machine could be appropriated to any order received for the same. That during said period, and prior and subsequent thereto, the petitioner had solicitors operating in the City of New York to solicit and take orders for comptometer machines manufactured by the petitioner. That during said period [fol. 9] and prior and subsequent thereto, it was expressly provided in the written agreements between the petitioner and its solicitors in New York City that their authority was confined merely to soliciting orders; that all orders taken must be submitted to and approved by the petitioner at Chicago, Illinois; that all sales should be made by the petitioner; and that solicitors should not collect any moneys due upon sales and that all payments should be made direct to the petitioner at Chicago, Illinois. That during said period, and prior and subsequent thereto, the petitioner received at Chicago, Illinois, orders taken by its solicitors in New York City for comptometer machines and upon receipt of an order the same was considered and was approved or disapproved by an officer of the petitioner at Chicago, Illinois. If approved, the said order was sent to petitioner's Billing department at Chicago, Illinois, where an order was made out on which appeared the customer's name and address, the destination of the shipment and the customer's order number, if any. Said order was then sent to petitioner's shipping department and a machine or machines were allocated and appropriated to the order by the

shipping department at Chicago, Illinois, or at some other place outside of the limits of the City and State of New York. The shipping department then inserted on the order blank, in the upper right hand corner, the serial number of the individual machine or machines allocated and appropriated to the order. The machine or machines were then packed for shipment by the shipping department and [fol. 10] were shipped in interstate commerce to the customer in New York City by express, freight or motor service of a common carrier. After shipment the order was returned to the billing department where an invoice was made out for the specific machine or machines shipped and the serial number of the individual machine or machines so shipped was designated on the invoice to the customer and the invoice mailed from Chicago, Illinois, to the customer. Collections were made and remittance in payment for machines shipped were received only at Chicago, Illinois, direct from the customer. No invoices were sent out from New York City to customers and no collections from customers were made in New York City.

10. That on or about February 13, 1937, after hearings had been held, respondent purporting to act under Chapter 873 of the laws of 1934 of the State of New York and under Local Law #20 of 1934, as amended, of the City of New York, made a final determination of sales taxes alleged to be due under said Statute and under said Local Law and of the interest and penalties thereon claimed to be due from petitioner for said period December 10, 1934 to December 31, 1935, in the sum of $3,122.53.

11. That on or about February 18, 1937, the petitioner paid involuntarily and under protest and duress said taxes and penalties in the sum of $3,122.53 for the period December 10, 1934 to December 31, 1935, to the City Collector of the City of New York through the office of the respondent. A copy of said protest is attached hereto and made a part hereof as Exhibit "A".

[fol. 11] 12. That on or about March 2, 1937, the petitioner, pursuant to the provisions of section 7 of Local Law #20 of 1934, as amended, made an application in writing to the respondent for a review of his determination by certiorari. A copy of said application is attached hereto and made a part hereof as Exhibit "B".

13. That on or about March 2, 1937, petitioner pursuant to the provisions of Section 10 of Local Law #20 of 1934, as amended, made an application and claim for a refund in writing of the taxes and penalties so paid by it to respondent involuntarily and under protest and duress and that no refund thereof has been made. A copy of said application and claim for refund is attached hereto and made a part hereof as Exhibit "C".

14. Upon information and belief that the respondent has improperly, illegally and erroneously assessed the petitioner for sales taxes and penalties in the sum of $3,122.53 for the period December 10, 1934 to December 31, 1935, and that said assessment is illegal, erroneous and improper in that during said period petitioner did not make sales of its products in the City of New York, and in that all sales during said period were consummated without the limits of the City of New York.

15. Upon information and belief that the levy and collection of a sales tax on the sales of the machines of the petitioner by the respondent is unconstitutional, in that its imposition and collection is prohibited by Article 1, Section 8 of the Constitution of the United States as being a [fol. 12] burden on interstate commerce and is further prohibited by the Constitution and laws of the State of New York.

16. That no other or previous application for this or a similar order of certiorari has been made to any court or judge, and that no other or previous application for certiorari herein has been made, except that on or about the second day of March, 1937, an application for certiorari was made to the respondent pursuant to Article 7 of Local Law #20 of 1934, as amended, which application has not been acted upon by the respondent.

Wherefore petitioner prays that an order of certiorari be granted herein directed to Frank J. Taylor, Comptroller of the City of New York, commanding him to return to this court his said rulings, regulations and assessment in the premises together with his proceedings, decisions and actions in the premises with the dates thereof respectively and all and singular the correspondence, evidence, documents, records, exhibits and papers before him touching and concerning the taxation of sales by petitioner as

herein above more specifically set forth and whether said sales were made within the City of New York and are taxable under the Statute and said Local Law #20 of 1934, as amended, to the end that his decision and action may be reviewed and corrected on the merits by this Court and any error committed in said rulings, regulations and assessments may be corrected according to law and that said rulings, regulations and assessments may be reviewed and [fols. 13-14] corrected and the respondent or his successor and successors in office be directed to refund to the petitioner the tax paid involuntarily and under protest and duress as aforesaid and that petitioner may have such other, further and general relief as to the court may seem just and proper together with the cost and disbursements of this proceeding.

Dated, Chicago, Illinois, March 8, 1937.

Felt & Tarrant Mfg. Co., by G. J. Coupe, Secretary, Petitioner. Newton K. Fox, Attorney for Petitioner, Office and P. O. Address, 42 Broadway, Borough of Manhattan, City of New York.

Duly sworn to by G. J. Coupe. Jurat omitted in printing.

[fol. 15] EXHIBIT "A," ANNEXED TO PETITION

Felt & Tarrant Mfg. Co.,

1735 North Paulina Street,

Chicago, U. S. A.

Comptometer. February 18, 1937.

City Collector, % Comptroller of the City of New York, Department of Finance, Emergency Revenue Division, 50 Lafayette St., New York, N. Y.

In re Felt & Tarrant Mfg. Co.

DEAR SIR:

Reference is made to the letter dated February 13, 1937, from the office of the Comptroller, Department of Finance, City of New York, Emergency Revenue Division, determining a New York City sales tax and penalties allegedly due

from the above Company pursuant to Local Law #20 of 1934, as amended, for the period from December 10, 1934 to December 31, 1935, in the sum of $3,122.53.

The above Company takes exception to the findings in said letter of any liability for sales taxes due or payable to the City of New York by said Company on the grounds that the sales of its products are consummated in Chicago, Illinois, the goods are appropriated to the order in Chicago, Illinois, and are thereafter shipped in interstate commerce. Therefore the levy of a sales tax against said Company by the City of New York is unconstitutional, is a burden on goods shipped in interstate commerce and is prohibited by the Constitution of the United States and by Section [fol. 16] 1 of Chapter 873 of the Laws of the State of New York approved August 18, 1934, pursuant to the provisions of which the City of New York passed Local Law #20, as amended.

A check of the Company to the order of the City Collector in the sum of $3,122.53 is attached hereto in payment of the taxes and penalties as determined, but payment thereof is hereby made involuntarily and under protest and duress pursuant to the power vested in the Comptroller by Section 8 of Local Law #20 of 1934, as amended, to issue a warrant, in default of payment of the taxes and penalties as determined, directed to the Sheriff of any County in the City of New York, directing and commanding him to sell the real and personal property of the Company found within the County for payment of the amount of the taxes and any penalties and the cost of executing the warrant.

The above Company in making payment expressly reserves the right to contest by certiorari proceedings or otherwise its liability for the payment of any New York City sales taxes and penalties for the period in question and to contest the validity of any levy of or for said taxes and penalties pursuant to Local Law #20, as amended, and hereby expressly reserves the right to a refund of the amount of taxes and penalties paid by it.

Respectfully, Felt & Tarrant Mfg. Co., (Signed) R. J. Koch, Treasurer.

RJKoch:AG.

[fol. 17] EXHIBIT "B," ANNEXED TO PETITION

Felt & Tarrant Mfg. Co.,
1735 North Paulina Street,
Chicago, U. S. A.

Comptometer. March 2, 1937.

Honorable Frank J. Taylor, Comptroller of the City of New York, Department of Finance, Emergency Revenue Division, New York, N. Y.

In re Felt & Tarrant Mfg. Co.

SIR:

Pursuant to the provisions of Section 7 of Local Law #20 of 1934, as amended, application is hereby made for a review by certiorari of your final determination made on February 13, 1937, under Local Law #20 of 1934, as amended, of sales taxes and penalties due from the above Company for the period December 10, 1934 to December 31, 1935, in the sum of $3,122.53.

A hearing has been held, final determination has been made, the taxes and penalties have been paid involuntarily and under protest and duress and an application for an order of certiorari directed against you to review the said final determination will be made to the Supreme Court of the State of New York.

Please acknowledge the receipt of this letter.

Respectfully, Felt & Tarrant Mfg. Co., (Signed) G. J. Coupe, Secretary.

GJCoupe: AG.

[fol. 18] EXHIBIT "C," ANNEXED TO PETITION

Felt & Tarrant Mfg. Co.,
1735 North Paulina Street,
Chicago, U. S. A.

Comptometer. March 2, 1937.

City Collector, % Comptroller of the City of New York, Department of Finance, Emergency Revenue Division, New York, N. Y.

In re Felt & Tarrant Mfg. Co.

SIR:

After a final determination under Local Law #20 of 1934, as amended, by the Comptroller of the City of New

York of sales taxes and penalties in the sum of $3,122.53, for the period December 10, 1934 to December 31, 1935, the said taxes and penalties were paid on February 19, 1937, by the above company to your office involuntarily and under protest and duress.

Pursuant to the provisions of Section 10 of Local Law #20 of 1934, as amended, an application and claim for refund of said taxes and penalties is hereby made in the sum of $3,122.53 on the ground that the said taxes and penalties were erroneously and illegally assessed and collected.

An application for an order of certiorari directed against Frank J. Taylor, Comptroller of the City of New York, to review his final determination of said taxes and penalties will be made to the Supreme Court of the State of New York.

Please acknowledge receipt of this letter.

Respectfully, Felt & Tarrant Mfg. Co., (Signed) G. J. Coupe, Secretary.

GJCoupe:AG.

[fol. 19] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

[Same title]

COMPTROLLER'S RETURN TO ORDER OF CERTIORARI

To the Supreme Court of the State of New York:

Frank J. Taylor, Comptroller of the City of New York, does hereby certify and make this return to an order of certiorari granted herein by Hon. Charles B. McLaughlin, a Justice of this Court, on the 10th day of March, 1937, consisting of all and singular his ruling and assessment in the premises with his proceedings, decisions, determinations and actions in the premises, and all and singular the evidence, documents, records and other papers before him or which were submitted to him relative to his determination of tax pursuant to New York City Local Law #20 of 1934, as amended, against Felt and Tarrant Mfg. Co.:

1. The return of receipts from sales and services pursuant to Local Law No. 20 of 1934, as amended, of Felt & Tarrant Mfg. Co., from December 10, 1934 to February 28, 1935.

2. The return to receipts from sales and services pursuant to Local Law No. 20 of 1934, as amended, of Felt & Tarrant Mfg. Co., from March 1, 1935 to May 31, 1935.

3. The return of receipts from sales and services pursuant to Local Law No. 20 of 1934, as amended, of Felt & Tarrant Mfg. Co., from June 1, 1935 to August 31, 1935.

4. Determination of the Comptroller of December 16, 1935, together with annexed exhibits determining tax defi- [fol. 20] ciency due from Felt & Tarrant Mfg. Co. under Local Law No. 20 of 1934, as amended, for the period from December 10, 1934 to August 31, 1935.

5. Letters, dated January 9 and 15, 1936, from Felt & Tarrant Mfg. Co. to City of New York, Department of Finance, requesting a hearing on said tax assessment.

6. Letter, dated January 22, 1936, from Milton Solomon, Deputy Comptroller, to Adrian C. Humphreys, attorney for Felt & Tarrant Mfg. Co. setting January 29, 1936 for hearing with respect to the determination of deficiency tax.

7. Minutes of testimony of hearing held April 29, 1936, at 2:30 P. M. in Room 836 at 50 Lafayette Street, Borough of Manhattan, City of New York, including the exhibits offered or received in evidence.

8. Determination of the Comptroller of the City of New York, dated June 24, 1936, determining tax deficiency due from Felt & Tarrant Mfg. Co. under Local Law No. 20 of 1934, as amended, for the period from December 10, 1934 to August 31, 1935, in the sum of $20,046.00.

9. Letter, dated July 7, 1936, from Felt & Tarrant Mfg. Co. to City of New York, Department of Finance, requesting a rehearing and an audit of the books at Chicago, Illinois.

10. Letter, dated July 20, 1936, from Milton Solomon, Deputy Comptroller, to Felt & Tarrant Mfg. Co. that an audit will be made.

11. Report after audit together with annexed exhibits determining additional tax due from Felt & Tarrant Mfg. Co. under Local Law No. 20 of 1934, as amended, for the [fol. 21] period from December 10, 1934 to December 31, 1935, as follows:

Principal	$3,218.01
Interest	535.22
Total	$3,753.23

12. Letter, dated November 20, 1936, from Felt & Tarrant Mfg. Co. to Milton Solomon, Deputy Comptroller, asking that a determination of sales tax liability be made and asking a credit of $630.70.

13. Determination of the Comptroller of the City of New York, dated February 13, 1937, reducing determination of deficiency tax due from Felt & Tarrant Mfg. Co. under Local Law No. 20 of 1934, as amended, for the period December 10, 1934 to December 31, 1935, to the sum of $3,122.53.

14. Letter from Felt & Tarrant Mfg. Co. to the Comptroller of the City of New York, dated February 18, 1937, transmitting check in the amount of $3,122.53, stating that the tax is paid under protest.

15. Letter from Felt & Tarrant Mfg. Co. to the Comptroller of the City of New York, dated March 2, 1937, stating that an application for an order of certiorari will be made.

16. Letter from Felt & Tarrant Mfg. Co. to the Comptroller of the City of New York, dated March 2, 1937, asking a refund of the taxes paid.

17. Letter from Milton Solomon, Deputy Comptroller, to Felt & Tarrant Mfg. Co., dated March 4, 1937, with reference to the request for a refund of the taxes paid.

[fol. 22] This return is based upon the records, proceedings and papers on file in the office of the Comptroller of the City of New York.

Respondent denies any knowledge or information sufficient to form a belief of any of the allegations set forth in paragraph 2 of the petition, except that respondent denies so much of paragraph 2 of the petition as alleges that petitioner is not doing business in the City and State of New York.

On information and belief, respondent denies each and every allegation set forth in paragraph 8 of the petition, except so much thereof as alleges that petitioner made sales of comptometers to persons in New York City during the period mentioned.

On information and belief, respondent denies each and every allegation set forth in paragraphs 9, 14 and 15 of the petition.

On information and belief, respondent denies so much of the allegations set forth in paragraphs 11 and 13 of the petition as allege that said taxes were paid under duress.

On information and belief, respondent denies all other allegations contained in the petition herein except as the same and to the extent that they may have been admitted by this return.

In Witness Whereof, the Comptroller of the City of New York has hereunto set his hand this 15th day of April, 1937.

Frank J. Taylor, Comptroller of the City of New York.

(Here follow three photolithographs, side folios 23-25)

Form 18 STX — 1 of Return — ORIGINAL

The City of New York
Department of Finance
BUREAU OF CITY COLLECTIONS

RETURN OF RECEIPTS FROM SALES AND SERVICES

FIELD AUDIT

(Pursuant to Local Law No. 20 of 1934 as amended)

Local Law No. 20 of 1934, as amended, imposes a tax to raise revenue for the purpose of relieving the people of the City of New York from the hardships and suffering caused by unemployment

Use form marked Duplicate For Work Sheet

PERIOD FROM December 10, 1934

TO February 28th, 1935

Enter Certificate No. here No. 1195

This space is for Departmental use only

PLEASE TYPE OR PRINT NAME AND ADDRESS ONLY — FOR PROPER ENTRIES

This return must be filed in one of the offices of the Bureau of City Collections indicated on the reverse side hereof within 20 days after the period covered by this return.

FOLT & TARRANT MFG CO
890 BROADWAY
NEW YORK N Y

B-1195

4 PCT

City No. 1786 Entered by

FEB. -26- 1935

Assigned by Ben Tucker

MAKE CHECKS PAYABLE TO CITY COLLECTOR

READ INSTRUCTIONS CAREFULLY BEFORE FILLING OUT RETURN
Answer All of the Following Questions

A. State kind and class of business Service of Comptometers
B. State whether taxpayer is a corporation, co-partnership, individual proprietorship, etc. Corporation
C. When was business begun? Prior to 1934 D. Was business discontinued during the period stated above? No
E. Has business name or address been changed during period stated above? No F. If so, give new name and address

G. Does this return cover business at more than one location? No If so, Form No. 1451 must be filed as part of this return.
H. The books of the taxpayer are in the care of H. L. Gilman, 299 Broadway, New York City, N. Y.
Name Address
I. If a method other than actual taxable sales is used in computing tax, state basis of computing taxable sales
J. State average monthly number of employees K. State average monthly salaries paid

Item No.	COMPUTATION OF TAX	For Taxpayer's use	For Departmental use only
1.	Receipts from sales (not included in Items 2 or 3)	$ 4,088.00	$ 411 29 3 37
2.	Receipts from installment sales upon which the tax is due	-	
3.	Receipts from sales of gas, electricity, refrigeration and steam and gas, electric, refrigeration, steam, telephone and telegraph service	-	
4.	Value of property purchased without tax used by you or in your business	-	1 112 17
5.	Total receipts (Items 1 to 4 inclusive)	$ 4,088.00	$ 412 401 54
6.	Less—Allowable deductions (Item 22, Page 2 of return)	-	1 000 -
7.	Receipts from taxable sales (Item 5 minus Item 6)	$ 4,088.00	$ 412 401 54
8.	Amount of tax (two [2%] percentum of Item 7)	$ 82.00	$ 8 28 11
9.	Total tax charged to customers on taxable sales	.00	
10.	Tax due the City of New York (Item 8 or Item 9, whichever is greater)	$ 82.00	$

DO NOT SEND CASH, CURRENCY OR STAMPS IN PAYMENT OF TAX
THE TAX PAYABLE TO THE CITY IS NOT LESS THAN 5% OF THE AMOUNT OF THE RECEIPTS FROM ALL TAXABLE SALES REGARDLESS SALES OF TWELVE CENTS OR LESS.

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules or statements, has been examined by me, and is, to the best of my knowledge and belief, a true and complete return, made in good faith, for the period stated, pursuant to Local Law No. 20, of 1934, as amended, and the regulations issued under authority thereof.

Sworn to and subscribed before me this 26th day of March 1935

Folt and Tarrant Manufacturing Co.
(Name of corporation, partnership, etc.)

Notary Public

My commission expires March 30, 1936

By [signature] Treasurer
Title

Form 12 STX. 1 of Returns ORIGINAL

RETURN OF RECEIPTS FROM SALES AND SERVICES

(Pursuant to Local Law No. 28, of 1934 as amended)

Local Law No. 28 of 1934, as amended, imposes a tax to raise revenue for the purpose of relieving the people of the City of New York from the hardships and suffering caused by unemployment

The City of New York

Department of Finance

BUREAU OF CITY COLLECTIONS

Use form marked Duplicate For Work Sheet

Enter Certificate No. here No.

PERIOD FROM December 30, 1934 to March 1-1935

TO February 28, to May 31st 1935

This return must be filed in one of the offices of the Bureau of City Collections indicated on the reverse side hereof within 20 days after the period covered by this return.

FELT & TARRANT MFG CO B-1175
299 BROADWAY
NEW YORK N Y 4 PCT

MAY 31 1935

This space is for Department use only Code No. 1705 Examined by

MAKE CHECKS PAYABLE TO CITY COLLECTOR

READ INSTRUCTIONS CAREFULLY BEFORE FILLING OUT RETURN

Answer All of the Following Questions

A. State kind and class of business Service of Complaints (Office Stationery)

B. State whether taxpayer is a corporation, co-partnership, individual proprietorship, etc Corporation

C. When was business begun? Prior to 1934. Was business discontinued during the period stated above? No.

E. Has business name or address been changed during period stated above? No. F. If so, give new name and address

G. Does this return cover business at more than one location? No. If so, Form No. 145L must be filed as part of this return.

H. The books of the taxpayer are in the care of H. L. Gilman, 299 Broadway, New York City, N. Y.
Name Address

I. If method other than actual taxable sales is used, state basis of computation J. Average monthly rental

K. State average monthly number of employees L. State total average monthly salaries paid

COMPUTATION OF TAX

Item No.		For Taxpayer's use	For Department use only
1.	Receipts from sales (not included in Items 2 or 3)	$ 5,797.80	$ 53,658.76
2.	Receipts from installment sales upon which the tax is due		
3.	Receipts from sales of gas, electricity, refrigeration and steam and gas, electric, refrigeration, steam, telephone and telegraph service		2-15
4.	Value of property purchased without tax used by you or in your business		1170 -
5.	Total receipts (Items 1 to 4 inclusive)	$ 5,797.80	$ 54,826.76
6.	Less—Allowable deductions (Item 21, Page 2 of return)		11 778 -
7.	Receipts from taxable sales (Item 5 minus Item 6)	$ 5,797.80	$ 43,048.76
8.	Amount of tax (two [2%] percentum of Item 7)	75.96	861 97
9.	Total tax charged to customers on taxable sales (including Item 4)	81.02	
10.	Tax due the City of New York (Item 8 or Item 9, whichever is greater)	$ 75.96	$

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules or statements, has been examined by me, and is, to the best of my knowledge and belief, a true and complete return, made in good faith, for the period stated, pursuant to Local Law No. 28 of 1934, as amended, and the regulations issued thereunder thereto.

Felt & Tarrant Mfg. Co.
(Name of Business or Taxpayer)

(Signature of Taxpayer or Officer or other authorized person, as the case may be)

TREASURER
Title

Sworn to and subscribed before me this 6th day of June 1935

(Signature of officer administering oath)

My commission expires 3-30-1937

Do Not Mail Coin, Currency or Stamps in Payment of Tax
The Tax Payable to the City is not Less than 2% of the Amount of the Receipts from all Taxable Sales including Sales of Trifling Costs or Less.

Cashier's Stamp

Form 12 STX — Page 1 of Return — ORIGINAL

The City of New York

Department of Finance

CITY COLLECTOR

RETURN OF RECEIPTS FROM SALES AND SERVICES

(Pursuant to Local Law No. 20 of 1934, as amended)

Local Law No. 20 of 1934, as amended, imposes a tax to raise revenue for the purpose of relieving the people of the City of New York from the hardships and suffering caused by unemployment

Use form marked Duplicate For Work Sheet

PERIOD FROM: June 1, 1934

TO: August 31, 1935

Enter Certificate No. here

This return must be filed in one of the offices of the Bureau of City Collections indicated on the reverse side hereof within 10 days after the period covered by this return.

FELT & TARRANT MFG CO
899 BROADWAY
NEW YORK N Y

B-1[illegible]

4 PCT

3

This space is for Department use only

MAKE CHECKS PAYABLE TO CITY COLLECTOR

READ INSTRUCTIONS CAREFULLY BEFORE FILLING OUT RETURN

Answer All of the Following Questions

A. State kind and class of business: Service of Comptometers

B. State whether taxpayer is a corporation, co-partnership, individual proprietorship, etc.: Corporation

C. When was business begun? Prior to 1930. Was business discontinued during the period stated above? No

E. Has business name or address been changed during period stated above? No F. If so, give new name and address

G. Does this return cover business at more than one location? No If so, Form No. 145L must be filed as part of this return.

H. The books of the taxpayer are in the care of H. L. Gilman, 899 Broadway, New York City, N. Y.
Name Address

I. If method other than actual taxable sales is used, state basis of computation J. Average monthly receipts

K. State average monthly number of employees L. State total average monthly salaries paid

COMPUTATION OF TAX

Item No.		For Taxpayer's use	For Department use only
1.	Receipts from sales (not included in Items 2 or 3)	$ 273.58	$ 3450[illegible]
2.	Receipts from installment sales upon which the tax is due		
3.	Receipts from sales of gas, electricity, refrigeration and steam, and gas, electric, refrigeration, steam, telephone and telegraph service		
4.	Value of property purchased without tax used by you or in your business		[illegible]10
5.	Total receipts (Items 1 to 4 inclusive)	$ 273.58	$ 3[illegible]17[illegible]
6.	Less—Allowable deductions (Item 21, Page 2 of return)		[illegible]677[illegible]
7.	Receipts from taxable sales (Item 5 minus Item 6)	$ 273.58	$ [illegible]6[illegible]
8.	Amount of tax (two [2%] percentum of Item 7)	17.48	[illegible]33
9.	Total tax charged to customers on taxable sales (including two percent of Item 4)	17.48	
10.	Tax due the City of New York (Item 8 or Item 9, whichever is greater)	$ 17.48	$ [illegible]8.35

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules or statements, has been examined by me, and is, to the best of my knowledge and belief, a verified complete return, made in good faith, for the period stated, pursuant to Local Law No. 20 of 1934, as amended, and the regulations issued thereunder.

Felt & Tarrant Mfg. Co.
Name of Business or Taxpayer

Taxpayer

Sworn to and subscribed before me this 18th day of September 1935

Notary Public

My commission expires 3-30-37

Do Not Mail Coin, Currency or Check in Payment of Tax. The Tax Payable to the City is one-half of One Per Cent of the Amount of the Receipts from all Taxable Sales including Sales of Tangible Goods, or Less.

Cashier's Stamp

This is [illegible] report for Felt & Tarrant Mfg. Co., covering [illegible] this is the complete [illegible] report [illegible]

[fol. 26] DOCUMENT No. 4, ANNEXED TO RESPONDENT'S RETURN

(Determination of the Comptroller of December 16, 1935, With Annexed Exhibits)

Form R-81. 23K-1.

Frank J. Taylor, Comptroller.
Milton Solomon, Deputy Comptroller.

Bureau of City Collections.
William Reid, City Collector.

The City of New York,

Department of Finance, Emergency Relief Taxes,

50 Lafayette Street, New York City

Dec. 16, 1935.

Name: Felt & Tarrant Mfg. Co.
Address: 299 Broadway, N. Y. C.
Registration Number M-1195.

Tax Deficiency Period Ended	Principal	Interest	Total
2/28/35	5400.00	702.00	6102.00
5/31/35	6000.00	600.00	6600.00
8/31/35	6800.00	544.00	7344.00
Total	$18200.00	$1846.00	$20046.00

Felt & Tarrant Mfg. Co., 299 Broadway, New York City.

DEAR SIRS:

The Comptroller hereby gives notice that based upon the exhibits and schedules herewith attached he has determined [fol. 27] that there is due and payable to the City of New York a deficiency of $20,046.00 in the amount of the tax (including interest and/or penalties) for the period from Dec. 10, 1934 to Aug. 31, 1935, pursuant to Local Law No. 20 of 1934, as amended.

Notice is hereby given that this determination shall finally and irrevocably fix the amount of tax due unless application in writing is made by you for a hearing thereon within thirty days after date of this letter.

Section 15 of Local Law No. 20 of 1934, as amended, provides in part as follows:

"Any person failing to file a return or to pay over any tax to the Comptroller within the time required by this Local Law shall be subject to a penalty of five per centum of the amount of tax due, plus one per centum of such tax for each month of delay or fraction thereof excepting the first month after such return was required to be filed or such tax became due * * *."

In the event of your failure to make application for a hearing within the time specified or to remit the tax assessed, the penalties as provided for in Section 15 hereinabove will become operative.

If you agree with the determination of your tax liability as stated above please remit the amount due together with this notice or a copy thereof, within thirty days after the date hereof.

Yours very truly, Milton Solomon, Deputy Comptroller.

[fol. 28] EXHIBIT A

Registration No. M-1195

Name: Felt & Tarrant Mfg. Co.
Address: 299 Broadway, N. Y. C.

12/10/34—2/28/35. Irving M. Haspel, Acct.

Summary Statement of Taxable Sales and Adjustments

Item No. as per Return	Particulars	As per Return	Return as Adjusted	Increase or Decrease	See Sched. Att'd.
1	Receipts from sales (not included in Items 2 or 3)...	4032.00	274032.00	270000.00	A1
2	Receipts from installment sales upon which the tax is due.....	.....	.....	.....	
3	Receipts from sales of gas, electricity, refrigeration and steam and gas, electric, refrigeration, steam, telephone and telegraph service.....	.....	.....	.....	
4	Value of property purchased without tax used by you or in your business.....	.....	.....	.....	
5	Total receipts (Items 1 to 4 inclusive).....	4032.00	274032.00	270000.00	

EXHIBIT A—Registration No. M-1195—Continued

Item No. as per Return	Particulars	As per Return	Return as Adjusted	Increase or Decrease	See Sched. Att'd
6	Less—Allowable deductions (See Item 21).....	—0—	—0—	—0—	
7	Receipts from taxable sales (Item 5 minus Item 6)...	4032.00	274032.00	270000.00	
8	Amount of tax (two (2%) percentum of Item 7)....	80.64	5480.64	5400.00	
9	Total tax charged to customers on taxable sales (including Item 4).....	.46	.46	—0—	
10	Tax due the City of New York (Item 8 or Item 9, whichever is greater).....	80.64	5480.64	5400.00	
	Penalties and interest 13%..	—0—	702.00	702.00	
	Total Tax, Penalties and Interest.....	80.64	6182.64	6102.00	

[fol. 29]

Schedule A-1
M-1195

Irving M. Haspel, Acct.

Felt & Tarrant Mfg. Co.,

299 Broadway, New York City

12/10/34—2/28/35

Item #1 of Return

Receipts from sales:

Amount as reported	$4032.00
Add: Additional receipts during taxable period, not reported (Note)	270000.00
Amount as adjusted	$274032.00

NOTE.—This amount represents additional receipts from taxable sales, not reported, as determined pursuant to Section 7 of Local Law #20 of 1935, as amended.

[fol. 30]

EXHIBIT B

Registration No. M-1195

Name: Felt & Tarrant Mfg. Co.
Address: 299 Broadway, N. Y. C.

3/1/35—5/31/35 Irving M. Haspel, Acct.

Summary Statement of Taxable Sales and Adjustments

Item No. as per Return	Particulars	As per Return	Return as Adjusted	Increase or Decrease	See Sched. Att'd
1	Receipts from sales (not included in Items 2 or 3)...	3797.30	303797.30	300000.00	B1
2	Receipts from installment sales upon which the tax is due.....	.....	.....	.....	
3	Receipts from sales of gas, electricity, refrigeration and steam and gas, electric, refrigeration, steam, telephone and telegraph service.....	.....	.....	.....	
4	Value of property purchased without tax used by you or in your business.....	.....	.....	.....	
5	Total receipts (Items 1 to 4 inclusive).....	3797.30	303797.30	300000.00	
6	Less—Allowable deductions (See Item 21).....	—0—	—0—	—0—	
7	Receipts from taxable sales (Item 5 minus Item 6)...	3797.30	303797.30	300000.00	
8	Amount of tax (two (2%) percentum of Item 7)....	75.95	6075.95	6000.00	
9	Total tax charged to customers on taxable sales (including Item 4).....	51.82	51.82	—0—	
10	Tax due the City of New York (Item 8 or Item 9, whichever is greater).....	75.95	6075.95	6000.00	
	Penalties and Interest 10%.	—0—	600.00	600.00	
	Total Tax, Penalties and Interest.....	75.95	6675.95	6600.00	

[fol. 31]

Schedule B-1
M-1195

Irving M. Haspel, Acct.

Felt & Tarrant Mfg. Co.,

299 Broadway, New York City

3/1/35—5/31/35

Item #1 of Return

Receipts from sales:

Amount as reported	$3797.30
Add: Additional receipts during taxable period, not reported (Note)	300000.00
Amount as adjusted	$303797.30

NOTE.—This amount represents additional receipts from taxable sales, not reported, as determined pursuant to Section 7 of Local Law #20 of 1935, as amended.

[fol. 32]

EXHIBIT G

Registration No. M-1195

Name: Felt & Tarrant Mfg. Co.
Address: 299 Broadway, N. Y. C.

6/1/35—8/31/35 Irving M. Haspel, Acct.

Summary Statement of Taxable Sales and Adjustments

Item No. as per Return	Particulars	As per Return	Return as Adjusted	Increase or Decrease	See Sched. Att'd
1	Receipts from sales (not included in Items 2 or 3)...	$ —0—	340000 00	340000 00	C-1
2	Receipts from installment sales upon which the tax is due.....	.....	.....	.....	
3	Receipts from sales of gas, electricity, refrigeration and steam and gas, electric, refrigeration, steam, telephone and telegraph service.....	.....	.....	.....	

EXHIBIT G—Registration No. M-1195—Continued

Item No. as per Return	Particulars	As per Return	Return as Adjusted	Increase or Decrease	See Sched. Att'd.
4	Value of property purchased without tax used by you or in your business.....	.....	.....	.....	
5	Total receipts (Items 1 to 4 inclusive).....	—0—	340000.00	340000.00	
6	Less—Allowable deductions (See Item 21).....	—0—	—0—	—0—	
7	Receipts from taxable sales (Item 5 minus Item 6)...	—0—	340000.00	340000.00	
8	Amount of tax (two (2%) percentum of Item 7).....	—0—	6800.00	6800.00	
9	Total tax charged to customers on taxable sales (including Item 4).....	—0—	—0—	—0—	
10	Tax due the City of New York (Item 8 or Item 9, whichever is greater.....	—0—	6800.00	6800.00	
	Penalties and Interest 8%..	.....	544.00	544.00	
	Total Tax, Penalties and Interest.....	—0—	7344.00	7344.00	

[fol. 33]

Schedule C-1
M-1195

Irving M. Haspel, Acct.

Felt & Tarrant Mfg. Co.,

299 Broadway, New York City

6/1/35—8/31/35

Item #1 of Return

Receipts from sales:

Amount as reported	—0—
Add: Additional receipts during taxable period, not reported (Note)	$340000.00
Amount as adjusted	$340000.00

NOTE.—This amount represents additional receipts from taxable sales, not reported, as determined pursuant to Section 7 of Local Law #20 of 1935, as amended.

[fol. 34]

City Sales Tax

Date Dec. 2, 1935

Name: Felt & Tarrant Mfg. Co.
Address: 299 Broadway, N. Y. C.

Registration No. M-1195.

Accountant: Irving M. Haspel.

Recapitulation

Period Covered	Exh.	Add'l. Taxable Receipts	Add'l. Tax	Penalties and Interest	Total Tax as Adjusted	Tax Reported	Tax Paid	Tax Due
12/10/34 to 2/28/35	A	270000.00	5400.00	702.00	6182.64	80.64	80.64	6102.00
3/ 1/35 to 5/31/35	B	300000.00	6000.00	600.00	6675.95	75.95	75.95	6600.00
6/ 1/35 to 8/31/35	C	340000.00	6800.00	544.00	7344.00	—0—	—0—	7344.00
Total.....		$910000.00	$18200.00	$1846.00	$20202.59	$156.59	$156.59	$20046.00

[fol. 35] DOCUMENT No. 5, ANNEXED TO RESPONDENT'S RETURN

(Letter, Dated January 9, 1936, Requesting a Hearing)

Felt & Tarrant Mfg. Co.,
1735 North Paulina Street,
Chicago, U. S. A.

Comptometer. January 9, 1936.

City of New York, Department of Finance, 50 Lafayette Street, New York City, N. Y.

Your reference M-1195

GENTLEMEN:

Attention Mr. Milton Solomon, Deputy Comptroller

We take exception to your determination of tax liability as shown on your tax determination notice dated December 16th, showing an assessment against this corporation of $20,046.00.

We request that you set a date for a hearing in this case and advise us of same.

Very truly yours, Felt & Tarrant Mfg. Co., G. J. Coupe, Secretary.

GJCoupe:AG.

[fol. 36] DOCUMENT No. 6, ANNEXED TO RESPONDENT'S RETURN

(Letter, Dated January 15, 1936, Requesting a Hearing)

Law Offices of Adrian C. Humphreys, 42 Broadway, New York

Adrian C. Humphreys.
Newton K. Fox.

Telephone: Digby 4-2190.

January 15, 1936.

City of New York, Department of Finance, 50 Lafayette St., New York City.

Attention Milton Solomon, Deputy Comptroller

GENTLEMEN:

Protest is made to your determination of December 16, 1935 of a deficiency of $20,046.00 in tax for the period of December 10, 1934 to August 31, 1935 under Local Law #20 of 1934, as amended.

It is respectfully requested that you grant a hearing on this determination at an early date, advising the undersigned at 42 Broadway, Borough of Manhattan, New York City, the date of such hearing.

Yours very truly, Felt & Tarrant Manufacturing Co., Adrian C. Humphreys, Attorney.

[fol. 37] DOCUMENT No. 7, ANNEXED TO RESPONDENT'S RETURN

(Letter, Dated January 22, 1936, Setting Hearing)

The City of New York

Department of Finance, Bureau of City Collections,
Emergency Tax Division,

50 Lafayette Street, New York, N. Y.

City Sales Tax.

Date Jan. 22, 1936.
Refer to File No. M-1195.

Name: Felt & Tarrant Mfg. Co.
Address: 1735 North Paulina Street, Chicago, Ill.,
City: ——. County: ——.

DEAR SIR:

In answer to your letter of Jan. 9, 1936 please be advised that a hearing will be held in Room 836 at 50 Lafayette Street, Borough of Manhattan, on Jan. 29, 1936 at 3:00 P. M., with respect to the determination of the deficiency tax assessed pursuant to the provisions of Local Law No. 20 of 1934, as amended.

You are accordingly advised to appear at the time and place hereinabove designated. A power of attorney is required in all cases where the taxpayer is represented by another person acting in his behalf.

Very truly yours, Milton Solomon, Deputy Comptroller.

[fol. 38] DOCUMENT No. 8, ANNEXED TO RESPONDENT'S RETURN

(Minutes of Testimony Taken at Hearing Held on April 29, 1936, at 50 Lafayette Street, New York, N. Y.)

Hearing

Felt & Tarrant Mfg. Co.

April 29, 1936.

Hearing Stenographer: Evelyn Savin.
Book 1, Pages 130-200; Book 2, Pages 1-34.

Testimony at Hearing Held April 29, 1936 at 2:30 P. M. in Room 836 at 50 Lafayette Street, New York, N. Y.

Mr. Louis Goodgold, Felt & Tarrant Mfg. Co., 299 Broadway, New York City.

Appearances:

Adrian C. Humphreys, Esq., Newton K. Fox, Esq., Attorneys for taxpayer, 42 Broadway, N. Y. C.
John C. Nevins, Vice-President.
H. L. Gilman, Division Manager.

Mr. Goodgold: This is a hearing pursuant to determination made by the Comptroller under Local Law #20 of 1934, [fol. 39] as amended, for the period of December 10, 1934, thru August 31, 1935.

Mr. Fox: My preliminary statement: This matter is before the Board on a determination of sales tax liability, and notice to the Felt & Tarrant Mfg. Co. of Chicago, Ill. The company upon receipt of the notice of proposed taxes duly filed a protest and requested a hearing. Hearings have been held on several occasions before Mr. O'Leary. Certain exhibits consisting of the sub-solicitors agreement, order blank of the company, bill of lading, weigh bill, and shipping notice were filed, together with the affidavits of Mr. Gilman, principal solicitor in New York City and Mr. Raymond J. Koch, president of Felt & Tarrant Mfg. Co. In addition, a brief of the authorities showing the limitations upon a state or municipality of burdening inter-state commerce, by attempting to tax sales of goods shipped in inter-state commerce was filed.

The position of Felt & Tarrant Mfg. Co. is that it is a foreign corporation organized under the laws of the State of Illinois. That it manufactures its product in Illinois and ships its goods in inter-state commerce, upon orders which are solicited in New York City and other places, which orders are subject to the approval of an officer of the company at Chicago. That upon receipt of an order, the goods are selected and appropriated to that order and the number of the machines so appropriated is placed on the——

Mr. Goodgold: I want to interrupt you at this stage by ruling out your statement. You are setting forth facts which the witness——

[fol. 40] Mr. Fox: These are questions we expect to prove.

Mr. Goodgold: I think that if you state you will prove these facts——

Mr. Fox: Yes.

Mr. Goodgold: But if you are setting out to make a case on these facts——

Mr. Fox: That is all to be brought out by witnesses.

Mr. Goodgold: If you will qualify that, I will permit it.

Mr. Fox: The above facts are what we expect to show by our witnesses. We further expect to show by our witnesses. In addition to the above we expect to show that there are no machines in New York City for sale. That the solicitors cannot sell a machine or close a sale, and that there is no warehouse or other depository in New York City where machines are carried in stock.

Mr. Nevins will be the first witness.

The witness having first been duly sworn did testify as follows:

Mr. Fox: What is your connection with the Felt & Tarrant Co.?

Mr. Nevins: I am the vice-president of the company and my principal duties are that of general salesman.

Q. Where are the offices of the company located?

A. 1735 N. Paulina, Chicago.

Q. Does the company have a manufacturing plant in New York State?

A. No, sir.

[fol. 41] Q. Are you familiar with the sub-solicitor's agreements that are executed?

A. I am.

Q. Will you identify that?

Mr. Goodgold: I think we ought to have a statement in the record that there are such agreements, and how they come about and ask if the witness is familiar with them.

Mr. Fox:

Q. Can you identify that?
A. Yes, sir.
Q. What is it?
A. It is an agreement executed between Harvey L. Gilman, part of the first part and one of the sub-agents in New York Mr. Edward.

Mr. Fox: I offer in evidence sub-solicitors agreement just identified and request that a photostatic copy be substituted in place of the original. You can compare that photostatic copy attached there.

Mr. Goodgold: I have to rule this agreement out on the ground that it states the 1st day of February, 1936, and has no bearing on the question at issue before us now, since the tax imposed relates to the period from December 10, 1934 thru August 31, 1935.

Mr. Fox:

Q. How long has that form been in use?
A. About 9 years.
Q. Has there been any change in that form during 9 years?
A. No, sir.

[fol. 42] Mr. Goodgold: Have you forms used during the period under review?

Mr. Fox: Can you get hold of some. Telephone for some.

Mr. Goodgold: If you want to stipulate for the record that that is a form of contract but not the contract upon which the Comptroller has based his determination, I will let it go in for what it is worth, but not as evidence substantiating your claim that sales are in inter-state commerce.

Mr. Fox:

Q. I ask if you can identify that?
A. This is our standard form of order blank.
Q. How long has that been in use?
A. For more than 15 years. I couldn't go back farther that that.

Q. I think there is a photostat of that. No the original is in there. I offer in evidence the blank used by Felt & Tarrant Co. for as least the last 15 years.

Mr. Goodgold: I will mark it for identification.

Mr. Fox:

Q. Was this form of order blank the only one in use during the period of December 10, 1934 to August 31, 1935?

A. It was.

Q. I will again offer the order blank in evidence.

Mr. Goodgold: I understand that this is the only one or type of blank. Any other type?

[fol. 43] A. We have no other type of order blank. That is the standard form.

Q. Are these order blanks forwarded to the company in Chicago by sub-solicitors in New York?

A. Yes.

Q. In every case?

A. No, not in every case. It is true that in some cases the customer issues his own purchase order, but these are the order blanks that every sub-agent carries and in the large majority of cases the customer signs.

Q. There are other order blanks forwarded to you by the customer which you honor?

A. Yes, sir.

Q. I will mark that in evidence.

Mr. Fox:

Q. Will you state what is done in Chicago when such order blank is received?

A. The order goes first to the credit department where it is passed on.

Q. What do you mean passed on?

A. Where credit is passed on. If the customer's credit is good the order is passed from there to the billing department, where an order is made out on the shipping department for the shipment of a comptometer, and on that order it specifies and shows the customer's name to whom the shipment is to be delivered and the customer's individual order, if there be one. There is an individual order number. A shipping order is then delivered to the shipping department and shipment is made of the machine.

Q. Is it required that this order be approved by an officer of the company?

A. It couldn't be filled without approval.

[fol. 44] Mr. Goodgold: Is it required by whom?

Mr. Fox: It is required by the company.

Mr. Goodgold: In accordance with the order here?

Mr. Fox:

Q. It is printed on the bottom of it. How is that acceptance made on the order blank?

A. That acceptance is made by the delegation by our treasurer to the credit man for his approval at the time.

Q. That is before the order is filled or after?

A. No that is before.

Q. Would it be upon receipt or later?

A. On receipt, because that is the first step in the procedure.

Q. What means do you use in making deliveries of these orders? How are they forwarded to the customer?

A. Well by common carrier. Sometimes by express, occasionally by freight, whether the shipment be a large one, or by regular motor service.

Q. Are there any limitations on the authority of the principal solicitor or sub-solicitor in relation to soliciting orders?

A. No, sir.

Q. What are the limitations on them?

A. At the time of the employ, when the original contract is signed and all subsequent contracts, that contract specifies that the only authority that the sub-solicitor has or the general solicitor, is to solicit orders for the machines. With the understanding that they are not definite orders until they have been approved and accepted in Chicago.

[fol. 45] Q. Do you have any warehouse or other depository in the City of New York or State of New York?

A. No, sir.

Q. Is there any stock of machines carried in New York City from which sales could be made?

A. No, sir.

Q. That was true during all the period covered in this investigation?

A. Yes, sir.

Q. I would like to state for the purpose of the record that all of my questions although not qualified as relating to the

period December 10, 1934 to August 1, 1935, are directed to the period in question of those taxes.

Q. Can you identify that paper?

A. I can.

Q. What is it?

A. That is an order made out by the billing department upon our shipping department for the shipment of a machine for which they have already received and approved an order.

Q. Where is that done?

A. At Chicago, Ill.

Q. Is that what you mean in our billing department?

A. Yes.

Q. What would you call it?

A. It is an order.

Q. I offer in evidence a typical shipping order and request that a photostatic copy be substituted for the original.

Mr. Goodgold: I'll have to rule it out on the ground it doesn't cover the period under review.

Mr. Fox:

Q. How long has this form been in use?

A. Many years.

[fol. 46] Mr. Goodgold: If you want to introduce that merely as to the form of order blank used by the company, I have no objection to marking it for identification, but it has no value as evidence.

Mr. Fox: I appreciate the period is not covered.

Q. How long has this been in use?

A. For many, many years.

Q. And it is a typical form used during the period in question?

A. Yes.

Q. In the upper right hand corner you see some figures. Will you explain the process—of when this is made up and when the figure is put on, and what that figure relates to?

A. The order blank?

Mr. Goodgold: Just a minute. At this stage of the proceeding, I also rule that that would not be admissible since it relates to a transaction not covered during the period under review.

Mr. Fox:

Q. Well then, will you state what was done during the period under review with reference to the blanks in use at that time?

A. The blank was made out showing the destination of shipment, customer's name, — whom the machine was to be delivered, and the blank then was sent to our shipping department. As soon as the machine was packed, that was allocated to this order, the man in charge of the shipping department puts down in the upper right-hand corner the [fol. 47] serial number of the individual machine assigned. Do you want me to go on?

Q. Yes, proceed.

A. The next step, is this shipping order is turned to the billing department, where a bill is made out for the specific machine. That is then shipped for the customer.

Q. And that is all done where?

A. At our general offices in Chicago.

Q. How are customers billed?

A. The ordinary kind of procedure. The billing department makes out a bill to the customer showing the serial number of the machine shipped, and that bill, together with a letter, is sent to the customer by mailing direct.

Q. From where?

A. From Chicago.

Q. Where are remittances received?

A. In Chicago only. We make all collections right from there.

Q. Are any billings made in New York City, or were any billings made in the City during the period in question?

A. No, sir.

Q. Any collections during the period in question?

A. No, sir.

Q. When your number is placed on the billing sheet, is there any notification sent to your principal solicitor?

A. Yes, sir.

Q. What do you advise him?

A. We advise him by means of a duplicate of the shipping order.

Q. And does that have the number of the machine on it?

A. Yes, sir. That is made out in duplicate by the shipping department.

Q. I would like to file one of these during the period in question certified to by——

[fol. 48] Mr. Goodgold: You mean a blank shipping order form.

Mr. Fox: Yes a typical order form during the taxable period.

Mr. Goodgold: All right, you may file it.

Mr. Fox: And file that in evidence, and a typical invoice too.

Mr. Goodgold: All right.

Mr. Nevins: There is a possibility that we might have some duplicate.

Mr. Fox: I would rather get the typical. You call it shipping order?

A. Shipping order in the factory.

Mr. Fox: I don't know of anything else to examine the witness on.

Mr. Goodgold: You are through with him? Mr. Nevins you are vice-president of Felt & Tarrant Mfg. Co.?

A. Yes, sir.

Q. How long have you been vice-president?

A. Since about 1914.

Q. Since 1914. Were you vice-president during the period under review?

A. Yes, sir.

Q. Can you tell us nature of the duties?

A. My duties consist primarily of the supervision of sales offices. The determination of sales policies, the approval of hiring of sub-solicitors, and the hiring of solicitors. A good many other things.

Q. You are thoroughly familiar with the operation of the company?

A. Absolutely.

[fol. 49] Q. Do you know whether or not the company is licensed to do business in the State of New York.

A. The Felt & Tarrant Mfg. Co. is not licensed as far as I know.

Q. Who would know?

A. Well that would be a matter of record.

Q. Can you find out and let us know?

A. I could. We are doing an interstate business and don't license.

Q. State for the record the nature and character of your transactions. In other words, what do you manufacture and what do you sell?

A. We manufacture comptometer adding and calculating machines.

Q. Will you describe just what those things are?

A. They are machines——

Q. What are they used for?

A. They are used for the rapid, accurate, figuring of all business calculations in billing departments, cost departments, statistical department, general accounting.

Q. Do you mean both types of machines?

A. We only manufacture the one.

Q. You said comptometer and calculator.

A. The comptometer is referred to as one machine.

Q. It is one machine but does both, is used as a calculator and comptometer?

A. Yes.

Q. Are there different types?

A. There are different sizes and different types, in that one is electrically and one is manually operated. There are also variations in special machines for the adding of fractions like the silk business use ⅛'h and the leather business ¼th and the package goods where they use 1/12th of a dozen and other special machines.

[fol. 50] Q. You have an office in New York City?

A. Yes, sir.

Q. Where?

A. 299 Broadway.

Q. What kind of office?

A. Sales office.

Q. Do you carry any stock on hand in your sales office?

A. We have sample machines.

Q. Do you have any available for sale?

A. No, sir.

Q. Are those machines that you carry for samples in your New York office any different than those in the Chicago office?

A. No, they are no different.

Q. You do all manufacturing in Chicago?

A. Yes.

Q. Do you do repair work in Chicago?

A. Yes, sir.

Q. Do any manufacturing in New York City?

A. No, sir.

Q. Do any repair in New York City?

A. No, sir.

Q. What kind of staff do you maintain in New York City?

A. We have a general solicitor Mr. Gilman and sub-solicitors.

Q. Do you have any mechanics employed in the City?

A. No.

Q. Direct or indirectly?

A. No, sir, the service end of the business is handled by another company entirely.

Q. Is there a contractual relation between the other company and customers to whom you sell machines?

A. I am sorry I don't get the meaning.

Q. You guarantee the machines that you sell in the City of New York?

A. Yes.

Q. What is the nature of the guarantee?

A. That guarantee contemplates the keeping of the ma- [fol. 51] chine in complete and accurate repair for one year from date.

Q. On the part of Felt & Tarrant Co.?

A. Yes.

Q. And then you say that Felt & Tarrant does not do that service. So you engage another company?

A. Yes.

Q. That company you engage has no contractual relation with the customer other than to perform as directed by you?

A. We don't direct them.

Q. You don't direct them?

A. They just do the business themselves.

Q. You guarantee to keep the machines in good and proper order and condition and in order to comply with the terms of the contract you engage an outside company to do the work?

A. Yes.

Q. And upon orders received from your company, this other company, by the way what is the name?

A. Comptometer Company.

Q. The Comptometer Company performs services you guarantee to your customers?

A. Yes, that is so. We don't have much to do in the first year.

Q. The customers look to you. How long is the guarantee good?

A. One year.

Q. The customers look to you at all times for the fulfillment of your part of the contract and not to Comptometer Company?

A. Yes, I suppose that would be true.

Q. And do you furnish parts to these customers as the case requires through Comptometer Company?

A. We do. The Comptometer Company buys the parts and does the work.

Q. In your behalf?

A. Well, if the case should require repair, I presume they would, because that is one of the obligations they have taken [fol. 52] over in turn for the arrangement they have with us for handling the repairs.

Q. But I am trying to get on the record that there is no contractual relation between Comptometer Company and your customer during the first year covered by your guarantee. That during such time the Comptometer Company merely acts as your agent?

A. Well, that isn't quite true. I will tell you why. One of the standard services that the Comptometer Company offer is the monthly inspection, oiling, cleaning service.

Q. To whom?

A. To their customers.

Q. But I am talking about your customers. The people to whom you sell comptometers?

A. But they render monthly services right during the first year.

Q. Only as a result of the obligation assumed by your company?

A. No, that is for the purpose of getting the customer in the habit of using the service and see how good it is so that he will continue long after the first year.

Q. And I ask isn't there a contractual relationship between the Comptometer Company and your customer?

Mr. Fox: I think it calls for a conclusion of law.

Mr. Goodgold: No, a question of fact. Is there any contract or agreement between the Comptometer Company and your customers that they will keep in good order the machines which the Felt & Tarrant Mfg. Co. sells to its customers, or is it a condition of the contract of sale that such company, the Comptometer Company will perform

[fol. 53] services required of you and under your contract for the first year. Surely that is not asking for a conclusion of law.

A. I don't know how to answer. I don't know. We don't have one repair that has to be made out of a thousand. They just don't get out of order. The case doesn't come up.

Q. Is there a contract between you and the Comptometer Company calling for their services to your machines sold to your customers?

A. There is a license issued as a result of the Board of Directors authorizing the Comptometer Company to handle the service.

Q. Is there no written agreement between Felt & Tarrant Mfg. Co. and the Comptometer Company?

A. To that extent.

Q. Have you a written agreement?

A. No.

Q. Can you give us a copy?

A. I guess we can.

Q. Will you please send it to us with the others. How do you make your sales in the City of New York? What is your method?

A. The sub-solicitors.

Q. Before you come to that, you have an arrangement with what you call a solicitor who in turn has sub-solicitors for the purpose of promoting your sales in the City of New York. Isn't there a written agreement between the solicitor and the Felt & Tarrant Mfg. Co. relating to such operations in the City of New York?

A. I don't know how to answer that.

Q. I want to know if a written agreement between the parties, between the solicitor and Felt & Tarrant Co. have the terms and conditions of employment between the parties? [fol. 54] A. No. I would have to answer no and yet that answer is not entirely correct.

Mr. Fox: Explain that.

Mr. Goodgold: Let me call your attention to the fact that there is an agreement dated February first, 1936, between the solicitor and Felt & Tarrant Mfg. Co. and I ask whether there is a similar agreement prior to that date.

A. You refer to a sub-solicitor's agreement with Mr. Gilman.

Q. Is there an agreement between the solicitor and the company, a written agreement?

A. No.

Q. Will you state for the record what those agreement terms were between the solicitor Mr. Gilman and your company? What were the terms of the agreement?

A. Of compensation?

Q. As they existed?

A. They consist of salary and agreed bonus on all sales over 500 a year, I believe.

Q. $500.00 a year?

A. No. 500 machines.

Q. Is Mr. Gilman, the solicitor, an employee of the company or is he an independent contractor?

A. I don't know how to answer. He is directly in our employ, yes.

Q. Is he on the payroll as an employee?

A. Yes, sir.

Q. Are the men he employs as sub-solicitors under your jurisdiction or under his jurisdiction?

A. They are directly under his jurisdiction.

Q. Does he pay them their salary, or is the company obligated to pay them?

A. We advance their salaries, it is true.

[fol. 55] Q. Would you say the sub-solicitors are employees of the company?

A. Well that is kind of hard to answer. Because, after all we supervise them in a general way. In a general way we might say we had jurisdiction, yet actually they are under his direction.

Q. They may be under his direction, but are they considered employees of the company or Mr. Gilman?

A. I would believe that they were employees of the company.

Q. Do you regard them as such on your payroll?

A. Yes.

Q. They are paid with the funds of the company, not with funds of Mr. Gilman?

A. That is right.

Q. Checks made out by the company to these sub-solicitors?

A. Yes.

Q. Who determines salaries?

A. Mr. Gilman.

Q. And has he power to bind the company in that respect?

A. Well we usually talk that over before changes are made, but at the same time if Mr. Gilman did so, it would have our backing.

Q. You introduced a form of order marked Taxpayer's Exhibit I. This is an order furnished by Felt & Tarrant Mfg. Co., isn't it?

A. Yes.

Q. The customer in many cases sends you his own form of order?

A. Yes, sir.

Q. And that form of order may be entirely different from what is indicated on your form?

A. It can't be very different because we won't accept an order unless it is addressed to Felt & Tarrant, Chicago.

Q. That is not my question. My question is that the letter or print on an order may be different?

A. Yes.

[fol. 56] Q. They may merely call for delivery of a certain amount of comptometers at certain prices and may be shipped on the order calling for delivery from your home office?

A. Yes, except the fact that those orders have to be addressed to Felt & Tarrant, Chicago, Illinois. It won't be accepted unless they are.

Q. In many cases they are sent to the New York office. What happens then?

A. If the order comes addressed to Felt & Tarrant Mfg. Co., 299 Broadway, it is sent back to the customer with instructions to change it to Felt & Tarrant Mfg. Co., Chicago.

Q. Ever change it yourself and send it to Chicago?

A. No, sir.

Q. What is the method of soliciting business from your customers in New York?

A. I should say the common way. Take a sample of the machine out, demonstrate it.

Q. You mean customers call at your place of business in the City of New York?

A. I say we take a sample out, they are small machines, and we carry it in carrying cases, and the sub-solicitors take it out, call on new prospects, demonstrate the machine.

Q. As a matter of fact, before you actually receive an order or contract of sale, isn't it a practice of your company

to install these machines in offices of the customer for his approval before a contract is acted upon by the customer?

A. That is sometimes done. What you mean is if when we demonstrate, he gets interested and says I would like to know whether that actually will do my work, and we say we'll leave you a trial machine and you can use it.

[fol. 57] Q. As a matter of fact the machine you leave is the machine you sell in many cases?

A. No, sir, never.

Q. Isn't that a common practice amongst people engaged in your line of business?

A. I don't know what other people do.

Q. They leave a machine in the office of customers for a considerable time and the customer decides to take it?

A. That machine is not sold. We have had occasion where a customer asked for the machine and he is told that is a sample machine and cannot be sold.

Q. The only reason the order must be sent to the home office, as I understand it, is to pass upon credit rating of the customer.

A. No, sir. That is not the only reason. There are other reasons. Sometimes a customer will make a mistake on price that he specifies on the order.

Q. Don't your salesmen quote him prices?

A. Yes.

Q. Don't they show him the type machine he is going to get?

A. Yes, sir.

Q. And then the only thing is whether his credit is good.

A. You will be surprised to see how many times they will get prices of different sizes wrong.

Q. You have a catalogue?

A. Yes.

Q. They use that?

A. I suppose they use it some times.

Q. Assuming there is no error on the part of the customer because of size, etc., assuming that he knows the type machine he wants, by reason of the fact that he has examined the sample, and he knows what it is going to cost, the only remaining thing is the passing upon credit by the home [fol. 58] office?

A. No, sir. There is another common reason. If the customer sends in an order, he is likely to have a clause saying it is subject to 2% discount for cash and we give no such

discount, and if that order comes in that way, it is returned to him.

Q. The solicitor in the City of New York has no power whatever to accept an order?

A. None whatever.

Q. His duties are merely to procure orders, as I understand?

A. To procure orders and send it in.

Q. And the order is accepted in the home office by whom?

A. By the treasurer.

Q. And then the goods are shipped and forwarded to the customer in the City of New York. How are they packed for shipment?

A. Well, regular shipping cartons.

Q. Do you pack individually or pack in large cases?

A. No, packed individually. They have to for protection.

Q. In what kind of container?

A. Well, it's a very heavy pasteboard carton, just big enough to contain the machine.

Q. Are all assembled parts of that machine inclosed in that carton?

A. Yes, it is the complete machine.

Q. And then they are then forwarded to the office of the solicitor, is that right?

A. Unless the customer specifies otherwise.

Q. As a general rule they are forwarded, they are shipped to the general solicitor here.

Q. Then the office of the solicitor opens the cartons to see whether they are fit for use?

A. They are tested before delivery. We have a great deal of breakage.

[fol. 59] Q. Then the solicitor performs other duties than procuring orders in the City of New York. He opens the cartons, he examines them, and if something is wrong, he causes them to be repaired, either by his salesmen or by others under his direction.

A. Yes.

Q. So that in addition to procuring orders these salesmen or solicitors do perform other services in the City of New York?

A. To that extent.

Q. How long do the machines remain in possession of the solicitor after receipt here?

Mr. Fox: I think we could find out through Mr. Gilman the questions as to what is done in the New York office.

Mr. Nevins: He could answer much better. He has first hand knowledge.

Mr. Goodgold: All right.

Mr. Goodgold: Do you want to have him sworn in?

Mr. Fox: I want to ask one or two questions.

Q. You stated salaries are advanced by Felt & Tarrant to sub-solicitors?

A. Yes.

Q. If they are advanced are they credited later against commissions earned?

A. Those solicitors as shown here are on salary and commission. They are paid regular salary and commission.

Q. Let us assume that the New York Telephone Co. sends in an order on its own form, rather than using the typical order form introduced in evidence. Must that be approved in Chicago?

A. Yes, sir.

Q. Could it be approved by the New York office without being forwarded?

A. No, sir.

[fol. 60] Q. Could it be filled by the local office?

A. No.

Q. With reference to demonstrating machines, has there ever been a case where such machine having been left for demonstrating purposes, has later been sold to that customer in the City of New York?

A. Not without it having come to Chicago.

Q. In other words, if a sub-solicitor leaves a demonstrating machine with the New York Telephone Company is that ever sold to the company? That particular demonstrating machine?

A. No, not at any time. No.

Q. With reference to the services performed by the Comptometer Company, have tax returns been filed with the City of New York, and tax returns been paid?

A. Yes.

Q. On all services rendered by Comptometer Company on sales?

A. Yes.

Q. How are customers billed on repair jobs by the Comptometer Company?

A. They are billed by Comptometer Company of Chicago.

Mr. Goodgold: Of course services rendered by Comptometer Company having to do with services under the first year's agreement with the customer, in such cases they are not charged anything, as I understand it.

Mr. Fox:

Q. Is that correct? Under the year's guarantee no charge is made by Comptometer Company for services performed?
A. No.

[fol. 61] Mr. Goodgold:

Q. Do you ever ship any merchandise yourself from Illinois to any extent. I mean do you have your own delivery service from Illinois?
A. No by common carrier.
Q. No delivery yourself?
A. No.
Q. When a machine is delivered to a customer in New York do you ever have occasion to take back an old machine?
A. Yes.
Q. Done often?
A. Yes, sir.
Q. Those machines are kept where?
A. Those are returned right away from here to our Chicago office.
Q. Originally where are they sent? Are they returned to the New York office first?
A. I would say in most cases they were picked up.
Q. Do you keep those machines in the New York office for any considerable time?
A. No.
Q. How long?
A. I am afraid you have to ask Mr. Gilman. What we do is wait for a few to ship back at a low rate.
Q. Ever re-sell to anybody in the City of New York?
A. No, sir.
Q. What happens to these machines?
A. Break them up.
Q. Don't rebuild?
A. We rebuild one out of 75 or 100.

Mr. Goodgold: That is all the questions I have to ask.

Mr. Fox:

Q. Can you identify that paper?

A. I can. It is the sub-solicitor's agreement dated July [fol. 62] 15, 1934, to be in force for one year from that date between Harvey L. Gilman.

Mr. Goodgold:

Q. It would appear from that agreement that Mr. Gilman is an independent contractor. That he is not an employee of Felt & Tarrant Mfg. Co. Isn't that a fact that the relationship existing between the sub-solicitors and the company are solely indirect but they are direct with the solicitor himself?

A. Of course this agreement cannot be put into effect until it is approved by an officer of the company.

Mr. Goodgold:

Q. Is there anything in this agreement that provides for that?

Mr. Fox:

Q. Who approved that?

A. I signed and approved it.

Mr. Goodgold:

Q. Where is anything in the contract that says the terms must be approved?

A. Page 2 of the contract, paragraph 8, "That this contract though signed is subject to the approval of Felt & Tarrant and shall not be binding until the approval of said company is endorsed."

Q. Shall not be binding upon whom? Cannot be binding on the solicitor?

A. Can't be binding upon anybody.

Q. I mean it will only be binding when approved, on Mr. [fol. 63] Gilman as solicitor and not on Felt & Tarrant Mfg. Co.

A. No. It seems that in the sense, that paragraph means that it is not actually a contract or agreement until——

Q. But the only condition in the contract affecting the Felt & Tarrant Mfg. Co. is the one as stated that it must meet with the approval of Felt & Tarrant Mfg. Co. Noth-

ing in the contract is binding on the company in any way in the contract between the solicitor and sub-solicitor. No contractual relationship between Felt & Tarrant Mfg. Co. and sub-solicitors.

A. Except in accordance with the terms of the contract that those terms have to be carried out to the satisfaction of Felt & Tarrant.

Mr. Goodgold: I take it you want to introduce that in evidence.

Mr. Fox: Yes, I would like to introduce, I would like to have Mr. Gilman and Mr. Nevins read into the record clause 2.

Mr. Goodgold: The contract speaks for itself. You can have it.

Mr. Fox: I offer sub-solicitors agreement in evidence.

H. L. GILMAN, having been duly sworn, testified as follows:

Mr. Goodgold:

Q. Will you state the nature and extent of your agreement of employment with Felt & Tarrant Mfg. Co.?

A. I am employed here to run a crew of men known as the New York office.

[fol. 64] Q. What do you mean crew of men?

A. We have 10 to 12 men.

Q. When you say we?

A. I say 10 or 12.

Q. What are they?

A. We call them sub-solicitors.

Q. What are their duties?

A. To go out and solicit orders.

Q. What other functions do you perform for Felt & Tarrant?

A. That they perform?

Q. That you and the sub-solicitors perform for the company?

A. The only way we make money is to go out and solicit orders from customers.

Q. That's not my question. What duties do you perform for the Felt & Tarrant Co. other than soliciting orders?

A. Train men. Get men to go out to sell machines.

Q. Do you train them to be salesmen?

A. Train them to be salesmen and demonstrate, so that they know about the business.

Q. Do you to train the men maintain a school?

A. We have a school over there, yes.

Q. What kind of school?

A. I don't know so far as salesmen. I don't have enough to call it a school. We have one or two men at a time.

Q. What other duties do you perform at 299 Broadway?

A. That is all.

Q. You received the merchandise consigned to the customers to the City of New York?

A. Yes.

Q. Do you open the cartons?

A. I don't open them. The Comptometer Company opens it.

Q. In other words, the Comptometer Company also has offices?

A. No we have a crew of men together.

[fol. 65] Q. A crew of men from where?

A. 299 Broadway.

Q. For whom are they working for?

A. For the Comptometer Company.

Q. Are they permanently stationed at 299 Broadway?

A. Yes.

Q. Then the Felt & Tarrant Co. thru the Comptometer Company does the repair and service at 299 Broadway?

Mr. Fox: That is a conclusion.

Mr. Goodgold:

Q. Who does that?

A. The Comptometer Company.

Q. Then I say, following that statement——

A. You asked me what I did. I said the Comptometer Company also performs services and repairs at 299 Broadway for the Felt & Tarrant Co.

Mr. Fox:

Q. For customers?

A. They go out and take care of the work. A machine breaks down. They go out and repair it or bring it in for repair.

Mr. Goodgold:

Q. I am not talking about that. I am talking about a shipment of any machine sold to a customer, shipped to 299 Broadway. After having reached its destination it is discovered the machine is not in working order, and it is necessary to put it in working order and for that purpose the Comptometer Company has its men there who perform that service?

A. Yes.

[fol. 66] Q. Then I ask you isn't the Comptometer Company performing these services in behalf of Felt & Tarrant Co. in the City of New York?

A. I think that's obvious.

Q. Right.

—. ——.

Q. How big a supply of machines do you carry in the New York office?

A. We don't carry any machines in New York City for sales purposes.

Q. I didn't ask that. I asked how big a supply?

A. It varies from 250-300 machines.

Q. Do you have that many types of machines in different sizes? How many types of machines?

A. 1.

Q. How many sizes?

A. We have two machines; one, hand-driven and one electrical driven.

Q. Aside from that difference, is there any other difference?

A. No, except size.

Q. How many sizes?

A. 4.

Q. Can you say how many hand driven?

A. We have—it varies.

Q. Altogether you have 250?

A. 250-300.

Q. Would you say 25% hand driven and——

A. Yes.

Q. 75% hand and 25% electrical driven; and that proportion of sales?

A. I wouldn't say that is the proportion of sales. I don't believe we sell—I don't know what our percentage of electrical machines would be at the moment.

Q. How many sizes of the hand driven machines have you?

A. 3.

Q. So that you would say of the hand machines there would be 225 in number and 75 electrical driven, and that of the hand machines you would have of each size on the [fol. 67] average of about 110 machines?

A. Well, I wouldn't like to talk about—I am just guessing. When you ask how many—I don't know whether 250 or 300.

Q. Based on your own figure?

A. That is an estimated figure.

Q. Suppose you say 75 machines. Assume you had 75 of each size. Assume you had 225 hand driven and of the electrical machines you would have 25——

A. 75.

Q. 75 all told. About 25 in each size? That is the quantity constantly on hand?

A. Some of it.

Q. Ever go above?

A. I don't know off-hand.

Q. Do you ever get orders from customers calling for immediate shipment and you are required to ship one of the machines from the New York office?

A. No. It never happens.

Q. What are the normal requirements of New York customers. What is the greatest number of machines in one day. Hand driven?

A. That would be hard to answer.

Q. Do you know?

A. No.

Q. Can you estimate?

A. No.

Q. You handle all shipments that come through the office?

A. Yes.

Q. You have been there a great many years?

A. About 4 years.

Q. Haven't you a rough idea of what the requirements in the City of New York are?

A. I have a vision of what I would like for it to be. But what it has been since I have been here, it is——

Q. Would you say the daily requirements are 10 machines?

A. No.

Q. Would you say less?

A. Very much less, yes.

Q. Why is it necessary to carry such a large supply of [fol. 68] machines in the show room?

A. We have 10, 11, 12 on the street working.

Q. But you have 300 machines?

A. The men have a good number of trials. We have repair loans. Machines break down. They are brought to the office for repairs. We might use 50 or 60 or 100 for repair loans.

Q. Still you would have approximately 240 machines available for demonstration purposes?

A. Those machines in stock are used wholly for repair loans. What we mean by repair loans—a machine may break down. We put a machine on trial and it is brought in. The customer may take 3 weeks to decide whether he wants it.

Q. Does it happen that the machine in the customer's possession breaks down so that it requires removal and return to Chicago, and you in turn are required to furnish him one of the machines kept in your show room?

A. Yes.

Q. And often times that machine remains permanently with the customer?

A. Never.

Q. How long a time does the machine remain in the New York office after receipt from the home office?

A. They will remain possibly one day, 2 days.

Q. What determines the period of time it remains in New York office?

A. As soon as boys get to it. Depends on how much is wrong with it.

Q. What is the longest period of time it remains in New York before being shipped to the New York customer?

A. Not more than 3 or 4 days.

Q. That is if nothing is wrong with the machine?

A. Even if there is something wrong. We get lots of machines with nothing wrong. They are tested and sent [fol. 69] right out. But at the longest 3 or 4 days. The funny thing about it. The fellow buys a machine. Why he wants it and they call very often, "When will I get my machine"?

Q. The fact is they have a trial machine?

A. Don't seem to help.

Q. Would you say in addition to selling by soliciting and sub-solicitors and the services rendered by the Comptometer Company that you also render further service in that it is your duty to replace broken down machines with those held in stock in the New York office?

A. In the form of trials or repair loans.

Q. After a machine breaks down and you are required to furnish customers with another machine that is furnished from the New York office, what is the longest period of time that machine remains in possession of others?

A. That varies.

Q. Approximately the longest period?

A. Possibly 30 days at most. Maybe longer—hard to tell.

Q. Suppose through the negligence of the customer the machine is destroyed by fire or for some other reason destroyed, are you obligated to furnish them with another machine?

A. I would say we were. I haven't had a case of that sort.

Q. What do you base that answer on?

A. I will say we haven't had one of that sort since I have been in New York, nor have we had machines lost.

Q. What is the understanding with the customer when a machine is furnished from the New York stock? Is the company obligated to furnish him with a new machine? [fol. 70] A. Why we give him the new machine when our machine is destroyed.

Q. Would you say there is no obligation on the part of the company to give him a new machine if that machine is destroyed by fire or otherwise?

A. It wasn't his machine destroyed, as I understand. It is our machine, so why give a machine because our machine is destroyed.

Q. Would you say there was an offset?

A. The only obligation we have is to take care of his machine while in our possession and that is the machine we have in for repair.

Q. Well, would you consider it as a fact that you have performed your part of the obligation when you supply him with that machine from the show room, and you are under no further obligation?

A. We do it every day; they go in and out.

Q. Would you say that is a transaction completely within the City of New York?

A. I don't suppose it is anywhere else.

Q. No question. You don't raise the question of interstate commerce there, do you?

A. No.

Q. Who pays the freight from Chicago to New York City?

A. On sold machines? Felt & Tarrant Co.

Q. Are orders marked F. O. B. Chicago, Illinois?

A. No, I don't know they are. Sometimes people put F. O. B.

Q. Would you say the sale takes place in the City of New York?

A. Would I say? We take the order in New York.

Q. You wouldn't say the sale takes place in Chicago?

A. I don't know that is my place to answer. I think that is a question of law.

Q. It is a question of law.

[fol. 71] Q. Would the customer pay for the machine if it weren't delivered to him in New York City?

A. I wouldn't if I was the customer.

Q. If a machine is lost in transit, the loss would fall on Felt & Tarrant, not on customer?

Mr. Fox: That is a question of law.

Mr. Goodgold:

Q. You guarantee a customer delivery of the machine?

A. I don't know anything else you call it.

Q. Then you call it guarantee?

A. We take an order. I don't know of guarantee.

Q. You wouldn't consider a sale has been made, until there has been an actual delivery to the customer in New York?

A. Again I think you can answer it yourself. It is obvious.

Q. I have no further questions.

Mr. Fox:

Q. Mr. Gilman, under your agreement with the company as principal solicitor, are you instructed in any way as to making sales?

A. I personally? Mr. Nevins said that, when I came to New York in 1932, "I don't care if you don't go into a customer's office. In fact I just hope you won't take an order, or that you will solicit an order. You get those fellows to get that business."

Q. Are you permitted under your agreement with the company to sell comptometer machines to any customer?

A. To any customer?

Mr. Goodgold: I think that is askin for a conclusion.

[fol. 72] Mr. Fox:

Q. Can you under your agreement with the company sell and deliver a cu tomer in New York?

A. I can take an order.

Q. That isn't what I asked?

A. That's all I can do.

Q. You are restricted to soliciting orders. Have you any authority to sell under your agreement?

A. No, in the sense I understand you mean sell.

Q. Under the sub-solicitor's agreement, have they any authority to sell and deliver machines in New York?

A. No, sir.

Q. Are they restricted by the sub-solicitor's agreement in that respect?

A. The contract states that.

Q. What does the contract state?

A. It is mutually understood and agreed——

Mr. Goodgold: I think the contract speaks for itself.

Mr. Fox:

Q. What is the clause? The number?

A. No. 1 on page 3.

Q. That is a restriction on the sub-solicitor as to his authority?

A. That is right.

Q. Now, this replacing of one of the machines that is broken down with machine from your office, is any charge made for that service?

A. Is there any charge made for it?

Q. For repair?

A. We charge for repair.

Q. Do you charge him, do you make a charge for furnishing him with a replacement machine?

A. No, sir.

[fol. 73] Q. No rental charge? It is gratis, free?

A. Yes.

Q. For the purpose of maintaining the good-will?

A. Yes. But again you are talking about the Comptometer Company and not the Felt & Tarrant Co.

Q. These 250-300 machines, are they owned by Felt & Tarrant or by the Comptometer Company?

A. They are owned by Felt & Tarrant.

Q. They are under the custody and control of Comptometer Company?

A. Yes.

Q. They perform, the Comptometer Company performs the service free of charge?

A. Right.

Q. As to the services by the Comptometer Company, have taxes been paid to the City of New York?

A. Yes.

Q. Have returns been regularly filed?

A. Yes.

Q. I don't know of anything else.

Mr. Goodgold:

Q. Is there anybody else authorized to make sales in the City of New York, other than——

A. No, sir.

Q. If the sub-solicitors and the solicitor do not make sales, who else makes it?

A. We solicit orders. The sub-solicitors solicit orders.

Q. The contention is made that you don't make sales, except that you solicit orders?

A. Again I say it is a question for you folks to decide.

Q. Is anybody else authorized to contact customers?

A. No.

Q. You have exclusive right to solicit trade?

A. Yes.

Q. These men assigned to do repair service by the Comptometer Company, are they under your jurisdiction? Do [fol. 74] you act as manager for the Comptometer Company too?

A. No.

Q. Are you in their employ?

A. No.

Q. Do you receive any compensation from the Comptometer Company?

A. No. Any compensation comes from Felt & Tarrant.

Q. Is the Comptometer Company a wholly owned corporation by the Felt & Tarrant Mfg. Co.?

A. I don't know; I couldn't answer.

Q. Do you, Mr. Nevins?

Mr. Nevins: Yes. It is subsidized.

Mr. Goodgold:

Q. Same stockholders?

A. It is controlled. A majority of the stock is held by Felt & Tarrant Company.

Q. Will you state what percentage of control it is?

A. I couldn't do that.

Q. Can you find out for us?

A. Yes.

Q. Will you also submit that with the others?

A. I don't see that it makes any difference. I would say it is wholly or practically controlled. I don't know just what they are. To answer for this purpose, I would say wholly controlled.

Q. I have no further questions unless you want to submit a brief or memorandum of law.

Mr. Fox: We already have a brief on file.

Mr. Goodgold: I thought that after the hearing and testimony today, you might further desire——

Mr. Fox: I may submit another brief.

Mr. Goodgold: Decision is reserved.

[fol. 75] TAXPAYER'S EXHIBIT 1—TYPICAL ORDER BLANK

(Face)

Order Blank

Felt & Tarrant Mfg. Co., Chicago, Ill.

GENTLEMEN:

Kindly enter our order for the following Comptometers:

Quality	Style	Size	Price	Serial Numbers
		12-Column	$400	
		10-Column	$350	
				Total

Terms: 30 days net. Not subject to quantity or cash discount.

Purchaser: ——, by ——, Official Capacity: ——, Street Address: ——, City: ——.

Solicitor: ——.
Date: ——, ——.

All orders subject to the acceptance of an officer of the company in Chicago.

Form 86.

[fol. 76] (Reverse)

The following is a copy of the guarantee covering the Comptometer you are purchasing. This guarantee is printed on the face of the bill you will receive.

We hereby Guarantee to keep the above

Comptometer

while in possession of ——

in complete repair for one year from date free of all charge for repairs. Accidents caused by willful negligence and loss by fire or water excepted only. Not responsible for carrying charges incurred.

Felt & Tarrant Mfg. Co.

[fol. 77] TAXPAYER'S EXHIBIT 2—SUB-SOLICITOR'S AGREEMENT

Form 164. Printed in U. S. A.

Sub-Solicitor's Agreement

This Agreement made the fifteenth day of July 1934, between H. L. Gilman of the City of New York City in the State of New York of the First Part, and C. F. Witkowski of the City of New York in the State of New York of the Second Part.

Witnesseth That the party of the First Part is authorized by Felt & Tarrant Manufacturing Company a corporation incorporated under the laws of the State of Illinois, and located and doing business in the City of Chicago, in said State, to solicit, personally and through sub-solicitors, orders for Comptometers in the following named territory and that the party of the First Part hereby employs the party of the Second Part to solicit orders for Comptometers manufactured by Felt & Tarrant Mfg. Co., Chicago, Illinois, in the territory comprising Territory #2 (Fulton Street South to Rector & Wall Street—River to River), and temporarily Territory #3 (Fulton Street North to Chambers Street, River to River).

for the period of one year from date of this contract, upon the following terms and conditions:

[fol. 78] The Party of the First Part Agrees

1. To pay to the party of the Second Part a salary of ninety-five dollars ($95.00) per month during the life of this contract, and in addition, a commision on each machine sold by party of the Second Part, to be used in said territory, whose sale is approved and accepted by the Felt & Tarrant Mfg. Co. in each six months' period, starting with the date of this contract, according to the following schedule: 5% on the first six machines sold in each six months' period, 10% on the second six machines sold in each six months' period, 15% on the third six machines sold in each six months' period, and 20% on all machines sold in excess of eighteen in each six months' period.

2. That the commission on each machine sold under this contract shall be due and immediately payable when full payment has been made for each Comptometer so sold.

3. That all orders taken by the party of the Second Part and accepted by the Felt & Tarrant Mfg. Co. will be filled as promptly as possible.

4. That party of the First Part will credit the party of the Second Part the Commission upon all good and valid orders for Comptometers received from responsible parties within said territory during the life of this contract on whom party of the Second Part has called and demonstrated the Comptometer within three months preceding the date of said order, and immediately reported to the Felt & Tarrant Mfg. Co.

[fol. 79] The Party of the Second Part Agrees

1. Whereas, party of the First Part and Felt & Tarrant Mfg. Co. have been to large expense in teaching and training Second Party to become a solicitor of Comptometers, adding and calculating machines; and

Whereas, there are other persons, firms and corporations in the United States manufacturing and selling adding and calculating machines who are competitors of the Felt & Tarrant Mfg. Co., and

Whereas, now that Second Party has been taught and trained at the expense of the party of the First Part and Felt & Tarrant Mfg. Co. to be a successful solicitor and salesman of such machines, such competing concerns may seek to hire Second Party away from First Party during the period covered by this contract, or seek to induce Second Party not to renew this contract at its expiration, thereby causing First Party and Felt & Tarrant Mfg. Co. great loss and depriving them of the benefit of the skilled services of Second Party so acquired at the expense of Felt & Tarrant Mfg. Co. and First Party;

Now, Therefore, in consideration of the foregoing, and in consideration of First Party employing Second Party as a solicitor by and under this contract, Second Party covenants and agrees with First Party that during the term covered by [fol. 80] this contract and for a period of two years thereafter, and for a period of two years after he ceases to be a solicitor for First Party, he will not become a solicitor for any person, firm or corporation engaged in the manufacturing or selling of adding or computing machines in the United States.

2. To devote his entire time and attention to the solicitation of orders for the Comptometer, and not to interest himself directly, or indirectly, in selling, soliciting orders for, or commending any other computing machines, designed for any numerical calculation.

3. To make daily reports of everything done under this contract upon forms supplied by the Felt & Tarrant Mfg. Co. and to report such other information as may be requested.

4. To solicit no order at less than the regular fixed price by the Felt & Tarrant Mfg. Co. and not to offer any rebate, or division of commission, gift or other thing, as an inducement to obtaining an order, except to take old or second-hand Comptometers in trade, on the terms stated below in paragraph 4 under "It is mutually understood and agreed."

5. That under no conditions shall he buy an old or second-hand Comptometer on his own account.

6. To return all Comptometers in his possession or placed by him on trial, or otherwise under his direction, and not [fol. 81] sold by the party of the First Part, within 30 days after the termination of this contract, and in default thereof to pay the full selling price to the party of the First Part. The said 30 days being also given the party of the Second Part to close any orders for machines on trial on the termination of this contract.

7. To return on demand or on termination of this contract to the Felt & Tarrant Mfg. Co., Chicago, all office records, correspondence and General Sales Bulletins which may have been sent to him during the life of this contract.

8. To personally make at least four calls per day on parties theretofore uninterested in the Comptometer and demonstrate its uses and workings to them.

It is Mutually Understood and Agreed

1. That the said party of the Second Part is merely a solicitor for orders, and that all orders taken must be submitted to and approved by the Felt & Tarrant Mfg. Co. and

that all sales and deliveries shall be made by the Felt & Tarrant Mfg. Co.

2. That all Comptometers shipped by the Felt & Tarrant Mfg. Co. under this contract shall remain the property of the Felt & Tarrant Mfg. Co. until actually sold and paid for.

[fol. 82] 3. That where an order for a Comptometer is accepted with the understanding that a second-hand Comptometer be taken by the Felt & Tarrant Mfg. Co. in part payment, the commission will be paid only on the amount of cash received. The old or second-hand Comptometer is to be the exclusive property of the Felt & Tarrant Mfg. Co.

4. That in case an old or second-hand Comptometer is taken in trade no allowance to exceed $30.00 for any Comptometer over three years old shall be made; no allowance to exceed $40.00 for any Comptometer which exceeds two years old; none to exceed $60.00 for any Comptometer which exceeds one year old. In no case is more than one old Comptometer to be taken in trade on account of each new Comptometer sold, and in no case is any wooden-box Comptometer to be taken in trade.

5. That the party of the Second Part shall not collect any moneys due upon sales under this contract, but that all payments shall be made directly to the Felt & Tarrant Mfg. Co.

6. That the agreement herein contained on the part of the party of the Second Part shall be performed in all respects to the satisfaction of Felt & Tarrant Mfg. Co. subject to cancellation of this agreement; or the Felt & Tarrant Mfg. Co. may, at its option, solicit orders for Comptometers in the above described territory directly, by mail, by advertisement or otherwise, and fill orders received from such solici-
[fol. 83] tation without being obliged to credit a commission to the party of the Second Part.

7. That no Comptometer shall be sold in the said territory at less than the regular printed price and on the terms set forth in the latest price list and circular matter issued from time to time by the Felt & Tarrant Mfg. Co.

8. That this contract, though signed, is subject to the approval of the Felt & Tarrant Mfg. Co. and shall not be binding until the approval of said Company is endorsed thereon.

9. That this agreement shall bind the heirs, legal representatives, successors, and assigns, of the parties hereto, but that the party of the Second Part shall not assign this contract without the written consent of the party of the First Part.

10. That educational and rebuilt machines are now at a reduced price and carry a reduced commission as follows: Commissions to agents and salary and commission basis are a flat 10%. These sales do not count on the sliding scale contract and consequently do not increase the commission rate on subsequent commercial orders.

Witness the hands and seals of the parties the day and year first above written.

Approved 7/16/34.

C. F. Witkowski (L. S.). Felt & Tarrant Mfg. Co.,
J. C. Nevins, Vice-President. H. L. Gilman.

[fol. 84] TAXPAYER'S EXHIBIT A—TYPICAL SHIPPING ORDER AND ENVELOPE

Shipping Order

Exhibit "A"

No. .....

Model: ..... Columns: ..... Purpose: .....

Shipped from Chicago .....
To .....
.....

Form 238. Printed in U. S. A.

Envelope

No. .....

Model: ..... Columns: ..... Purpose: .....

Shipped from Chicago .....
To .....
.....

[fol. 85] TAXPAYER'S EXHIBIT B—TYPICAL INVOICE AND FIVE CARBON COPY RECORDS

(Invoice)

Exhibit "B"

Felt & Tarrant Mfg. Co.,
1735 North Paulina Street,
Chicago, U. S. A.

(Cut) Sales Offices in 107 of the Largest Cities in United States and Canada. Foreign Sales Offices in all Principal Countries of Europe and South America and in Australia, Mexico and India.

Sold to ——. Order No. —.

In Remitting Please Show the Following
Invoice No. E 09934.

Terms: 30 Days Net. Not Subject to Cash Discount

Make All Checks Payable to Company

Remit Directly to Chicago

Clear-Signal, Controlled-Key Comptometer

8-Column Model J @ 300.00 #
10-Column Model J @ 350.00 #
12-Column Model J @ 400.00 #

[fol. 86] We hereby guarantee to keep the above Comptometer in complete repair for one year from date free of all charge for repairs, while in possession of above purchaser, accidents caused by negligence and loss by fire or water excepted only. Not responsible for carrying charges incurred.

Felt & Tarrant Mfg. Co.

Form 1050.
Printed in U. S. A.

Carbon Copy "Record"—Invoice No. E9934.
Carbon Copy "Journal-Sheet"—Invoice No. E9934.
Carbon Copy "Ledger Sheet"—Invoice No. E9934.
Carbon Copy "Accounting Dept. Commission Copy"—Invoice No. E9934.
Carbon Copy "Agent's Copy of Invoice"—Invoice No. E9934.

[fol. 87] LETTER, DATED MAY 4, 1936, FROM THE DEPARTMENT OF STATE

Edward J. Flynn, Secretary of State.
Frank S. Sharp, Deputy Secretary, Chief of Division.

(Seal)

State of New York
Department of State, Division of Corporations,
Albany

GMC46. Albany May 4, 1936.

Adrian C. Humphreys, 42 B'way, N. Y. City.

DEAR SIR:

This office is in receipt of your favor of the 30th ult. It does not appear from our records that Felt and Tarrant Manufacturing Company, United Autographic Register Company, Illinois corporations, The Mani-fold Company, or The Globe Register Company, Ohio corporations have filed qualifying papers or received authority to do business in this state.

Comptometer Co., a Delaware corporation, received authority to do business in this state, June 28, 1935.

Yours truly, Frank S. Sharp, Chief of Division.

[fol. 88] DOCUMENT NO. 9, ANNEXED TO RESPONDENT'S RETURN

(Determination of the Comptroller, Dated June 24, 1936)

(Letterhead of The City of New York, Department of Finance, Emergency Revenue Division)

June 24, 1936.

In re Felt & Tarrant Mfg. Co., 200 Broadway, N. Y. C.

Period: 12/10/34 to 8/31/35.

Principal	$18,200.00
Interest	1,846.00
Total	$20,046.00

Felt & Tarrant Mfg. Co., 299 Broadway, New York, N. Y.

GENTLEMEN:

A careful analysis of the testimony taken at the hearing held in this office on April 29, 1936, in connection with the Comptroller's determination of your tax liability to the City of New York, pursuant to Local Law #20 of 1934, as amended, for the period from December 10, 1934 to August 31, 1935, discloses that you are engaged in the sale of tangible personal property at retail within the City of New York and that these sales are made through your solicitor and sub-solicitors.

[fol. 89] Although delivery of the machines sold to your customers in the City of New York is made therein from your home office in Chicago, Ill. the contracts pursuant to which these sales are made do not specifically require that delivery must be made from points outside the City or State of New York.

The testimony also shows that you maintain a sufficient quantity of machines in your New York office from which deliveries could be made and that there is nothing in your sales contracts to prevent your Company from making sales in the City of New York from such stock. The testimony also shows that the machines which are shipped from a point outside the City of New York are delivered to your New York office where they are repaired if necessary and assembled or adjusted, as the case may be, and after several days are delivered to your customers in the City of New York.

Based upon the above facts you are hereby notified that the determination hereinabove is hereby declared final and irrevocable.

The tax, including interest, on this determination is $20,046 and must be paid to the City of New York within five days from the date hereof.

In the event of your failure to pay the amount of tax due, the Comptroller will issue a warrant in accordance with Section 8 of Local Law #20 of 1934, as amended, which provides in part as follows:

"Whenever any vendor * * * shall fail to pay over any tax and/or to pay any tax or penalty imposed by this [fol. 90] Local Law * * * the Comptroller may issue a warrant, directed to the Sheriff of any County within the

City of New York, commanding him to levy upon and sell the real and personal property of the vendor * * * which may be found within the County, for the payment of the amount thereof, with any penalties, and the cost of executing the warrant * * *."

When making your remittance attach thereto this letter or a copy thereof.

Very truly yours, Milton Solomon, Deputy Comptroller.

[fol. 91] DOCUMENT NO. 10, ANNEXED TO RESPONDENT'S RETURN

(Letter, Dated July 7, 1936, to the Department of Finance)

(Letterhead of Adrian C. Humphreys)

July 7, 1936.

The City of New York, Department of Finance, 50 Lafayette Street, New York City.

Attention Milton Solomon, Deputy Comptroller

In re Felt & Tarrant Manufacturing Co.

GENTLEMEN:

Reference is made to your letter dated June 24, 1936, determining a sales tax liability, pursuant to Local Law #20 of 1934, as amended, for the period from December 10, 1934 to August 31, 1935, in the principal sum of $18,200 and interest of $1,846 a total of $20,046.

The above determination is based upon estimated sales during the taxable period of $917,829.30, whereas the total actual sales for the period in question were $111,755 and from that figure should be deducted sales amounting to $13,530 which are exempt from tax as having been made to the Federal Government, to the State of New York, to the City of New York, to educational institutions, etc.

At a conference held on July 6, 1936, by our attorney Newton K. Fox, Esq., and Messrs. Solomon and Sheehan [fol. 92] an agreement was reached to reopen the case and determine the actual amount of sales by having an auditor

from your Department proceed to the offices of the Company at 1735 North Paulina Street, Chicago, Illinois, to verify the figures from the books and records of the Company.

Attached hereto is the Company's check for $125 drawn to the order of Frank J. Taylor, Comptroller City of New York, to cover the traveling and incidental expenses of the auditor and it is requested that the audit be begun and completed at the earliest possible date.

It is further requested that the determination of tax liability by letter dated June 24, 1936, be set aside and cancelled, that the case be reopened and a re-hearing granted after the audit is completed.

Respectfully, Felt & Tarrant Mfg. Co., By Newton K. Fox, Attorney.

NKF:PC.

[fol. 93] DOCUMENT No. 11, ANNEXED TO RESPONDENT'S RETURN

(Letter, Dated July 20, 1936, to Felt & Tarrant Mfg. Co.)

(Letterhead of The City of New York, Department of Finance, Emergency Revenue Division)

July 20th, 1936.

In re Felt & Tarrant Mfg. Co.

Taxable Period: 12/10/34 to 8/31/35

Felt & Tarrant Mfg. Co., 299 Broadway, New York, N. Y.

GENTLEMEN:

With reference to the letter dated July 7, 1936, from your attorney, and the Comptroller's determination of your tax liability to the City of New York pursuant to Local Law No. 20 of 1934, as amended, for the period from December 10, 1934, to August 31, 1935, as stated in Department letter dated June 24, 1936, this will advise you that the determination is held in abeyance, an audit will be made and the tax liability for the period in question will be determined.

Your legal rights to certiorari proceedings from the said

determination of tax liability are preserved without prejudice.

Very truly yours, Milton Solomon, Deputy Comptroller.

MF.

[fol. 94] DOCUMENT No. 12, ANNEXED TO RESPONDENT'S RETURN

(Report After Audit with Annexed Exhibits)

Name: Felt & Tarrant Mfg. Co.
Address: 1735 N. Paulina St. Chicago, Ill.

Registration Number M-1195-98.

Tax Deficiency Period Ended	Principal	Interest	Total
2/28/35	$727.47	160.04	887.51
5/31/35	772.97	146.86	919.83
8/31/35	555.33	88.85	644.18
12/31/35	1162.24	139.47	1301.71
Total	$3218.01	535.22	3753.23

Felt & Tarrant Mfg. Co., 1735 N. Paulina St., Chicago, Ill.

GENTLEMEN:

The Comptroller hereby gives notice that based upon the exhibits and schedules hereto attached he has determined that there is due and payable to the City of New York a deficiency of $3753.23 in the amount of the tax (including interest and/or penalties) for the period from December 10, 1934, to December 31, 1935, pursuant to Local Law No. 20 of 1934, as amended.

Notice is hereby given that this determination shall finally and irrevocably fix the amount of tax due unless application in writing is made by you for a hearing thereon within [fol. 95] thirty days after date hereof.

Section 15 of Local Law No. 20 of 1934, as amended, provides in part as follows:

"Any person failing to file a return or to pay over any tax to the Comptroller within the time required by this

Local Law shall be subject to a penalty of five per centum of the amount of tax due, plus one per centum of such tax for each month of delay or fraction thereof excepting the first month after such return was required to be filed or such tax became due * * *."

In the event of your failure to make application for a hearing within the time specified or to remit the tax assessed, the penalties as provided for in Section 15 hereinabove will become operative.

If you agree with the determination of your tax liability as stated above please remit the amount due together with this notice or a copy thereof, within thirty days after the date hereof.

Yours very truly, Milton Solomon, Deputy Comptroller.

[fol. 96]

EXHIBIT "A"

The City of New York—Department of Finance—Emergency Revenue Division, 50 Lafayette Street, New York, N. Y.

Name of Taxpayer: Felt & Tarrant Mfg. Co.
Address: 1735 N. Paulina St., Chicago, Ill.
Registration No. M-1195.
Local Law No. 20 of 1934, as amended.
Period Audited 12/10/34 to 12/31/35.
Accountant Ben Pecker.
* Indicates Deduction.

Item No.	Receipts from Sales and Services as Adjusted	Total	Period Audited 12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35	Sch. No.
A	Tax Due the City of New York as reported (Item 10 of return)		80.64	75.95	17.48	—0—	
B	Add—Tax—Two per centum of additional taxable receipts (Exhibit "C")		727.47	772.97	555.33	1162.24	
C							
D	Total tax (Items A to C inclusive)		808.11	848.92	572.81	1162.24	
E	Amount of tax—Two per centum of total receipts as adjusted (Exhibit B)	3392.08	808.11	848.92	572.81	1162.24	
F	Tax due the City of New York (Item D or E, whichever is greater)	3392.08	808.11	848.92	572.81	1162.24	
G	Amount of tax Paid	174.07	80.64	75.95	17.48	—0—	
I	Balance of Tax unpaid (Item F minus Item G)	3218.01	727.47	772.97	555.33	1162.24	
			22%	19%	16%	12%	
	Add: Penalties or Interest to	535.22	160.04	146.86	88.85	139.47	
	Total tax due the City of New York (Item H plus Item I)	3753.23	887.51	919.83	644.18	1301.71	

[fol. 97] EXHIBIT "B"

City of New York—Department of Finance—Emergency
50 Lafayette Street, New York, N. Y.

Name of Taxpayer: Felt & Tarrant Mfg. Co.
Address: 1735 N. Paulina St., Chicago, Ill.
Registration No. M-1195.
Local Law No. 20 of 1934, as amended.
Period Audited 12/10/34—12/31/35.
Accountant Ben Pecker.
* Indicates Deduction.

Item No.	Receipts from Sales and Services as Adjusted	Period 12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35	Sch. No.
1	Receipts from Sales (Not included in Items 2 or 3)	41593.37	53050.76	34507.22	94394.22	
2	Receipts from installment sales	.....	.....	.....	.....	
3	Receipts from Sales and Services of gas, electricity, refrigeration, etc.	.....	.....	.....	.....	
4	Value of property purchased without tax used by you or in your business	1112.17	1170.00	810.00	1616.00	
5	Total Receipts (Items 1 to 4 inclusive)	$42705.54	54220.76	35317.22	96010.22	

[fol. 98]

	Less: Allowable Deductions (Items 11 to 20 incl.)					
11	Receipts from sales for purpose of resale	.....	.....	.....	.....	
12	Receipts from sales of food products	.....	.....	.....	.....	
13	Receipts from sales of food in restaurants where the charge per patron is less than $1.00	.....	.....	.....	.....	
14	Receipts from sales to Federal, State and Municipal agencies	390.00	9845.00	3405.00	9960.00	
15	Receipts from sales delivered outside the City	640.00	1270.00	2040.00	26758.00	
16	Receipts from sales to Semi-public institutions	.....	.....	.....	.....	
17	Cash Discounts taken at time of sale and Trade Discounts	.....	.....	.....	.....	
18	Credits allowed on property accepted in part payment and intend for resale	1270.00	660.00	855.00	1180.00	
19	Credits allowed on property returned, cancelled sales and defective merchandise	—0—	—0—	377.17	—0—	
20	Other allowable deductions permitted by the law or regulations	.....	.....	.....	.....	
21	Total Allowable Deductions (Items 11 to 20 incl.)	$ 2300.00	11775.00	6677.17	37898.00	
	Total Taxable Receipts as Adjusted (Item 5 minus 21)	$40405.54	42445.76	28640.05	58112.22	

See Exhibit A for Computation of Tax. Item numbers correspond with Item numbers on return.

[fol. 99]

EXHIBIT "C"

City of New York—Department of Finance—Emergency
50 Lafayette Street, New York, N. Y.

Name of Taxpayer: Felt & Tarrant Mfg. Co.
Address: 1735 N. Paulina St., Chicago, Ill.
Registration No. M-1195.
Local Law No. 20 of 1934, as amended.
Period Audited 12/10/34—12/31/35.
Accountant: Ben Pecker.
* Indicates Deduction.

Item No.	Summary of Additional Taxable Receipts	Period 12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35	Sch. No.
	Add—Taxable Receipts not Reported.					
1	Receipts from sales	37561.37	49253.46	33633.64	94394.22	1
2	Receipts from installment sales	.....	.....	.....	.....	
3	Receipts from Sales and Services of gas, electricity, refrigeration, etc	.....	.....	.....	.....	
4	Value of property purchased without tax used by you or in your business	1112.17	1170.00	810.00	1616.00	2
5	Total taxable receipts not reported (Items 1 to 4 inclusive)	$38673.54	50423.46	34443.64	96010.22	
[fol. 100]						
	Add—Deductions Disallowed:					
11	Receipts from sales for purpose of resale	.....	.....	.....	.....	
12	Receipts from sales of food products	.....	.....	.....	.....	
13	Receipts from sales of food in restaurants where the charge per patron is less than 1.00					
14	Receipts from sales to Federal, State and Municipal agencies	390.00	9845.00	3405.00	9960.00	3
15	Receipts from sales delivered outside the City	640.00*	1270.00*	2040.00*	26758.00*	4
16	Receipts from sales to Semi-public institutions	.....	.....	.....	.....	
17	Cash Discounts taken at time of sale and Trade Discounts	.....	.....	.....	.....	
18	Credits allowed on property accepted in part payment and intended for resale	1270.00*	660.00*	855.00*	1180.00*	5
19	Credits allowed on property returned, cancelled sales and defective merchandise	—0—	—0—	377.17*	—0—	6
20	Other deductions permitted by the law or regulations	.....	.....	.....	.....	
21	Total Deductions Disallowed (Items 11 to 20 incl.)	2300.00*	11775.00*	6677.17*	37898.00*	
	Total Additional Taxable Receipts (Item 5, plus 21)	$36373.54	38648.46	27766.47	58112.22	

See Exhibit A for Computation of tax. Item numbers correspond with Item numbers on return.

[fol. 101] Schedule C-1

Accountant: Ben Pecker
M-1195

Felt & Tarrant Mfg. Co., 1735 N. Paulina St., Chicago, Ill.

Item #1 of Return	12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35
Receipts from Sales:				
Amounts as reported	$4032.00	3797.30	873.58	0
Add—				
Additional Receipts from Sales, not reported (Note)	37561.37	49253.46	33633.64	94394.22
Amounts as adjusted	$41593.37	53050.76	34507.22	94394.22
Note—				
These amounts represent receipts from sales of machines in N. Y. City as per list prepared, not reported	$37345.00	48645.00	32825.00	93308.00
Add—				
Additional receipts from sale of parts	2237.93	2454.84	1207.89	1086.22
Add—				
Rentals of machines	2010.44	1950.92	474.33	0
Total receipts from N. Y. City sales as per list prepared a copy of which was left with your office for reference	41593.37	53050.76	34507.22	94394.22
Deduct—				
Amounts reported	4032.00	3797.30	873.58	0
Additional receipts not reported.	$37561.37	49253.46	33633.64	94394.22

[fol. 102] Schedule C-2

Item #4 of Return	12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35
Value of property purchased without tax used by you or in your business:				
Amounts as reported	$ 0.	0	0	0
Value of property purchased or used by you not reported (Note)	1112.17	1170.00	810.00	1616.00
Amounts as adjusted	$1112.17	1170.00	810.00	1616.00
Note—				
These amounts represent value of oil and parts used by you in your business as estimated from your total charges for each period	28.17	42.00	42.00	56.00
Add—				
Rental charges for machines used by the N. Y. City Comptometer school as per schedule prepared a copy of which was left with your office	1084.00	1128.00	768.00	1560.00
Total	$1112.17	1170.00	810.00	1616.00

[fol. 103] Schedule C-3

Accountant: Ben Pecker
M-1195

Felt & Tarrant Mfg. Co., 1735 N. Paulina St., Chicago, Ill.

Item #14 of Return	12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35
Receipts from sales made to Federal, State and Municipal agencies:				
As reported	$ 0	0	0	0
Receipts from sales made to Federal, State and Municipal agencies not reported (Note)	390.00	9845.00	3405.00	9960.00
As adjusted	$390.00	9845.00	3405.00	9960.00
Note—. These amounts represent receipts from sales made to the U. S. Gov't., to the State of New York and to the City of New York which are allowed	$390.00	9845.00	3405.00	9960.00

[fol. 104] Schedule C-4

Accountant: Ben Pecker
M-1195

Felt & Tarrant Mfg. Co., 1735 N. Paulina St., Chicago, Ill.

Item #15 of Return	12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35
Receipts from sales where the merchandise was delivered to points outside the City of New York:				
As reported	$ 0	0	0	0
Receipts from sales delivered outside the City of New York not reported (Note)	640.00	1270.00	2040.00	26758.00
As adjusted	$640.00	1270.00	2040.00	26758.00
Note— These amounts represent sales made in New York City where the merchandise was delivered outside New York City which are allowed	$640.00	1270.00	2040.00	26758.00

[fol. 105] Schedule C-5

Accountant: Ben Pecker
M-1195

Felt & Tarrant Mfg. Co., 1735 N. Paulina St., Chicago, Ill.

Item #18 of Return	12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35
Credits allowed on tangible personal property of similar kind accepted in part payment and intended for resale:				
As reported	$ 0	0	0	0
Credits for Trade-ins Allowances not reported (Note)	1270.00	660.00	855.00	1180.00
As adjusted	$1270.00	660.00	855.00	1180.00
Note—				
These amounts represent credits allowed on comptometers accepted in part payment and intended for resale which are allowed	$1270.00	660.00	855.00	1180.00

[fol. 106] Schedule C-6

Accountant: Ben Pecker
M-1195

Felt & Tarrant Mfg. Co., 1735 N. Paulina St., Chicago, Ill.

Item #19 of Return	12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35
Credits allowed on property returned, cancelled sales and defective merchandise:				
As reported	.....	.....	$ 0	.....
Credits on cancelled sales not reported (Note)	.....	.....	377.17	.....
As adjusted	.....	.....	$377.17	.....
Note—				
This amount represents credits for cancelled sales, which is allowed	.....	.....	$377.17	.....

[fol. 107] DOCUMENT NO. 13, ANNEXED TO RESPONDENT'S RETURN

(Letter, dated November 20, 1936, from Felt & Tarrant Mfg. Co. to Deputy Comptroller)

(Letterhead of Adrian C. Humphreys)

November 20, 1936.

Milton Solomon Esq., Deputy Comptroller, The City of New York, Emergency Revenue Division, 50 Lafayette St., New York, N. Y.

In re Felt & Tarrant Mfg. Co.

GENTLEMEN:

With reference to your letter dated July 20, 1936, request is hereby made for immediate determination of the Sales Tax liability, if any, of Felt & Tarrant Mfg. Co. of Chicago, Illinois, pursuant to Local Law #20 of 1934, as amended, for the period from December 10, 1934, to December 31, 1935.

A field audit of the books and records of the company at Chicago was made by Mr. Pecker as auditor for the City and a summary of his report is as follows:

[fol. 108]

	Periods			
	12/10/34 to 2/28/35	3/1/35 to 5/31/35	6/1/35 to 8/31/35	9/1/35 to 12/31/35
Item 1 Receipts from N. Y. C. Sales	$41,593.37	$53,050.76	34,507.22	94,394.22
4 Purchases subject to tax	1,112.17	1,170.00	810.00	1,616.00
5 Total Receipts	42,705.54	54,220.76	35,317.22	96,010.22
Allowable Deductions:				
14 Sales to Govt. agencies	390.00	9,845.00	3,405.00	9,960.00
Item 15 Outside Deliveries	640.00	1,270.00	2,040.00	26,758.00
18 Trade in Allowances	1,270.00	660.00	855.00	1,180.00
19 Cancelled Sales	.....	.....	377.17	.....
Total Allowable Deductions	2,300.00	11,775.00	6,677.17	37,898.00
Taxable Receipts as adjusted	40,405.54	42,445.76	28,640.05	58,112.22
Amount of tax 2% of total	808.11	848.92	572.80	1,162.24
Deduct tax paid	80.64	75.95	17.48	.....
Balance of Tax Unpaid	727.47	772.97	555.32	1,162.24
Penalties	146.95	146.86	88.85	139.47
Total Tax Due $3,740.14	874.42	919.83	644.18	1,301.71

[fol. 109] The Felt & Tarrant Mfg. Co. takes exception to the findings in said report that any sales tax is due or payable by this company to the City of New York because the sales of its products are consummated in Chicago, Illinois, the goods are appropriated to the order in Chicago, Illinois, and are thereafter shipped in interstate commerce.

The report covers New York City customers but does not give credit for machines upon which the customer paid the tax. Attached hereto is a list showing Invoice date, Name and Address of Customer, Comptometer No., Amount of Invoice and Tax Credit. Also attached are photostat copies of letters numbered 1 to 14 inclusive, showing payment of tax by New York City customers in the total sum of $630.70.

Claim for credit of $630.70 is therefore made against any tax found payable.

Respectfully, Felt & Tarrant Mfg. Co., by Newton K. Fox, Attorney.

NKF:PC.

[fol. 110] DOCUMENT No. 14, ANNEXED TO RESPONDENT'S RETURN

(Determination of the Comptroller, Dated February 13, 1937)

(Letterhead of The City of New York, Department of Finance, Emergency Revenue Division)

City Sales Tax.
Final Determination.
M-1195.

February 13, 1937.

Adrian C. Humphreys, Esq., 42 Broadway, New York City.

Re Felt & Tarrant Mfg. Co.

DEAR SIR:

Receipt is acknowledged of your letter of November 20, 1936, taking exception to the Comptroller's notice of determination of the tax due by Felt & Tarrant Mfg. Co., pursuant to Local Law #20 of 1934, as amended, for the period from December 10, 1934 to December 31, 1935, on the ground that this determination includes sales to New York City

customers who have paid the tax due thereon directly to the Comptroller of the City of New York.

A list of these sales together with photostatic copies of letters from the customers to the effect that they had paid the tax due on such sales was enclosed with your letter.

You are hereby advised that the amount of the Comptroller's determination is reduced by $630.70 which is the amount claimed to have been paid by your client's custom-
[fol. 111] ers directly to the Comptroller. This leaves a balance due amounting to $3,122.53.

This determination is final and irrevocable.

In the event of your client's failure to pay the tax due, the Comptroller will issue a warrant in accordance with the law. Section 8 of Local Law #20 of 1934, as amended, provides in part as follows:

"Whenever any vendor * * * shall fail to pay over any tax and/or to pay any tax or penalty imposed by this local law * * * the Comptroller may issue a warrant, directed to the Sheriff of any County within the City of New York, commanding him to levy upon and sell the real and personal property of the vendor * * * which may be found within the County for the payment of the amount hereof, with any penalties and the cost of executing the warrant * * *."

Payment of the amount due must be made within five days from the date hereof and this letter or a copy thereof should accompany your client's remittance: Checks and money orders should be made payable to the order of the City Collector and forwarded to the Comptroller of the City of New York, 50 Lafayette Street, New York City.

Very truly yours, Milton Solomon, Deputy Comptroller.

PI/JS.

[fol. 112] DOCUMENT No. 15, ANNEXED TO RESPONDENT'S RETURN

(Letter Dated February 18, 1937, from Felt & Tarrant Mfg. Co. to City Collector; Transmitting Check)

Same as Exhibit "A", annexed to Petition printed herein at side folios 15-16.

DOCUMENT NO. 16, ANNEXED TO RESPONDENT'S RETURN

(Letter, Dated March 2, 1937, from Felt & Tarrant Mfg. Co. to Comptroller)

Same as Exhibit "B," annexed to Petition and printed herein at side folio 17.

DOCUMENT NO. 17, ANNEXED TO RESPONDENT'S RETURN

(Letter, Dated March 2, 1937, from Felt & Tarrant Mfg. Co. to City Collector)

Same as Exhibit "C," annexed to Petition and printed herein at side folio 18.

[fol. 113] DOCUMENT NO. 18, ANNEXED TO RESPONDENT'S RETURN

(Letter, Dated March 4, 1937, from Comptroller to Felt & Tarrant Mfg. Co.)

(Letterhead of The City of New York, Department of Finance, Emergency Revenue Division)

March 4, 1937.

Felt & Tarrant Mfg. Co., 1735 North Paulina Street, Chicago, Illinois.

Attention Mr. G. J. Coupe

GENTLEMEN:

Receipt is acknowledged of your letter dated March 2, 1937, advising of the payment of sales tax and penalties in the sum of $3,122.53, for the period from December 10, 1934, to December 31, 1935, and applying and claiming a refund of said taxes and penalties.

Your letter also advises of your intention to apply for an order of certiorari, directed against Frank J. Taylor, Comptroller of the City of New York, to review his final determination of said taxes and penalties to the Supreme Court of the State of New York.

You are hereby advised that pending a determination by the Court your claim for refund is hereby denied.

Very truly yours, Milton Solomon, Deputy Comptroller.

LG:EK.

[fol. 114] STIPULATION WAIVING CERTIFICATION OF THE RECORD

It is Hereby Stipulated and Agreed, by and between the attorneys for the respective parties hereto, that the foregoing consists of true and correct copies of the order of certiorari and petition and return, with documents annexed thereto, upon which the respondent acted in making the determination sought to be reversed herein and now on file in the Office of the Clerk of the County of New York and certification thereof pursuant to Section 616 of the Civil Practice Act is hereby waived.

Dated, New York, August 16th, 1937.

Newton K. Fox, Attorney for Petitioner. Paul Windels, Corporation Council, Attorney for Respondent.

[fol. 115] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

[Title omitted]

NOTICE OF APPEAL TO THE COURT OF APPEALS

SIRS:

Please take notice that the respondent hereby appeals to the Court of Appeals from the order of the Appellate Division of the Supreme Court, First Department, dated the 27th day of May, 1938, and entered in the office of the Clerk of said Appellate Division on or about the 2nd day of June, 1938, sustaining the order of certiorari herein and annulling the determination of the respondent in so far as and to the extent that the tax herein was applicable in the sum of $2,973.98, and the respondent also appeals from the judgment entered thereon in the office of the Clerk of the County of New York on or about the 15th day of June, 1938, in favor of the petitioner for the sum of $3,453.07, and the re-

[fol. 116] spondent appeals from each and every part of said order and judgment as well as from the whole thereof.

Dated, June 29, 1938.

Yours, etc., William C. Chanler, Corporation Counsel; Attorney for Respondent, Office and P. O. Address, Municipal Building, Borough of Manhattan, New York City.

To Newton K. Fox, Esq., Attorney for Petitioner, 42 Broadway, Borough of Manhattan, New York City. Archibald R. Watson, Esq., Clerk of New York County.

[fol. 117] In Supreme Court of New York, Appellate Division

Present: Hon. Francis Martin, Presiding Justice; Hon. James O'Malley, Hon. Edward J. Glennon, Hon. Irwin Untermyer, Hon. Edward S. Dore, Justices.

5468

In the Matter of the Application of Felt & Tarrant Mfg. Co., Petitioner,

For an Order of Certiorari

against

Frank J. Taylor, Comptroller of the City of New York, Respondent

Order—May 27, 1938

The above named petitioner, Felt & Tarrant Mfg. Co., having obtained an order of certiorari dated March 10, 1937, to review the determination of the above named respondent, Frank J. Taylor, Comptroller of the City of New York, in assessing a sales tax deficiency against the petitioner in the sum of $3,122.53, pursuant to Local Law No. 20 of 1934, as [fol. 118] amended by Local Law No. 24 of 1934 of the City of New York, for the period from December 10, 1934, to December 31, 1935, and the said proceeding having been argued by Newton K. Fox, Esq., counsel for petitioner, and Frank J. Derrick, Esq., of counsel for the respondent, and due deliberation having been had thereon; it is hereby ordered and adjudged:

That the order of certiorari be and the same hereby is sustained, and that the determination of the Comptroller, in so far as and to the extent that he held the tax was applicable in the amount of $2,973.98, be and the same hereby is annulled, with $50.00 costs and disbursements to the petitioner, and

Further ordered that the said sum of $2,973.98, with interest from February 19, 1937, be refunded to the petitioner by the Comptroller of the City of New York.

Enter.

F. M.

[fol. 119] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

Index No. 5883. Year 1937

In the Matter of the Application of FELT & TARRANT MFG. Co., Petitioner,

For an Order of Certiorari

against

FRANK J. TAYLOR, Comptroller of the City of New York, Respondent

JUDGMENT ENTERED ON ORDER OF THE APPELLATE DIVISION

An order of certiorari to review the determination of the above-named respondent, Frank J. Taylor, in the assessment of an alleged sales tax deficiency against the petitioner in the sum of $3,122.53, pursuant to Local Law No. 20 of 1934, as amended by Local Law No. 24 of 1934 of the City of New York, for the period from December 10, 1934 to December 31, 1935, having been granted on March 10, 1937, by Honorable Charles B. McLaughlin, Justice of the Supreme Court, upon the prayer of the petitioner, Felt & Tarrant Mfg. Co., and the Appellate Division of the Supreme Court of the State of New York, First Department, having considered said petition and order and having entered in the office of the Clerk of said Appellate Division on the 2nd day of June, 1938, an order sustaining the order of certiorari herein and annulling the determination of tax liability by the said Frank J. Taylor in the amount of $2,973.98 and di-

[fol. 120] recting that the said sum of $2,973.98 with interest thereon from February 19, 1937, be refunded to the petitioner together with $50 costs and disbursements of the petitioner; and the remittitur from the said Appellate Division, First Department, having been duly filed in the office of the County Clerk, New York County, on the 8th day of June, 1938, to be proceeded upon according to law; and the disbursements of the petitioner having been duly determined in the sum of $193.94.

Now on reading and filing the remittitur from the Appellate Division, Supreme Court, First Department, and on motion of Newton K. Fox, attorney for petitioner, it is

Ordered and adjudged that the petitioner Felt & Tarrant Mfg. Co., whose address is No. 1735 North Paulina Street, City of Chicago, State of Illinois, recover and that the Comptroller of the City of New York, whose address is the Municipal Building, Borough of Manhattan, City and State of New York, refund and repay to the petitioner forthwith the sum of $2,973.98, with interest thereon at 6 per cent per annum from February 19, 1937, to the date hereof in the sum of $235.15, together with $243.94 costs and disbursements as aforesaid making in all the sum of $3,453.07 with interest thereon at six per cent per annum until paid, and that the petitioner have execution therefor.

Dated, New York, the 15th day of June, 1938.

Archibald R. Watson, Clerk.

[fol. 121] In Supreme Court of New York, Appellate Division

Opinion

[Reported in 254 App. Div. 246]

Glennon, J.:

It is conceded by the petitioner that the tax on certain items amounting to $148.55 was properly levied and consequently, having paid $3,122.53 the full amount assessed, it seeks a refund of the difference amounting to $2,973.98, with interest from February 19, 1937, the date of payment.

The petitioner, Felt & Tarrant Mfg. Co., is an Illinois corporation. It has never qualified to do business in the

State of New York. It has its principal office and place of business in Chicago and is engaged in the business of manufacturing and selling comptometers, adding and calculating machines. The company has no manufacturing plant, warehouse or other depository in the State of New York. All manufacturing is done at Chicago. It maintains an office in New York City for the purpose of soliciting orders for comptometers. This business is done by a principal solicitor and his assistants. The authority of the employees is restricted to the soliciting of orders. The agreement under which they work provides as follows:

"It is Mutually Understood and Agreed."

"1. That the said party of the Second Part is merely a solicitor for orders, and that all orders taken must be submitted to and approved by the Felt & Tarrant Mfg. Co. and that all sales and deliveries shall be made by the Felt & Tarrant Mfg. Co."

[fol. 122] A standard form of order blank is used. The order is addressed to "Felt & Tarrant Mfg. Co." The order blank contains the following statement:

"All orders subject to the acceptance of an officer of the Company in Chicago."

If the order is approved by an officer in Chicago, it is sent to its billing department there. A comptometer is then appropriated to the contract of sale by the shipping department and its serial number is inserted in the upper right hand corner of the order. The machines are then packed in individual cartons for shipment by a common carrier in Illinois, to the purchaser here. The shipping order is then turned over to the billing department, where an invoice is made out for the specific machine. The invoice, which is sent from Chicago to the customer, shows the serial number of the comptometer which was shipped.

The invoice has a statement on its face, "Make all checks payable to Company—remit directly to Chicago." All remittances are received and collections made at the Company's home office. No billings or collections are made in New York City. No comptometers are kept in New York for the purpose of sale. There are some which are used for what is called "repair loans" and demonstration purposes. "Repair loans" refer to machines which are loaned to customers in the event that those purchased directly

become defective and need repair. The servicing of the comptometers is done by the Comptometer Company, a [fol. 123] Delaware corporation, authorized to do business in New York.

It was stated on the argument that the practice employed by petitioner in the conduct of its business was followed for a long period of time prior to the enactment of the New York City sales tax. The petitioner in the sale and shipment of its machines from Chicago to New York is engaged in interstate commerce, and consequently, the municipal authorities have no right to impose a tax upon the receipts.

We can find no fundamental difference in the facts now under review, from those which were before the court in the Matter of National Cash Register Co. v. Frank J. Taylor, etc. (276 N. Y. 208). There Judge Lehman said:

"The power of the State of New York to tax receipts derived from transactions in interstate commerce is limited by the provisions of the Constitution of the United States. * * * The power of the city of New York to tax receipts from sales is conferred upon it by statute (Laws of 1934, Ex. Sess. ch. 873). The power so conferred cannot transcend the limitations imposed upon the power of the State by the Constitution of the United States, and it is restricted further by limitations imposed by the State in the Enabling Act. That act provides expressly that it does not 'authorize the imposition of a tax on any transaction originating and/or consummated outside of the territorial limits of any such city, notwithstanding that some [fol. 124] act be necessarily performed with respect to such transaction within such limits'."

For the reason assigned, the determination of the Comptroller should be annulled with $50 costs and disbursements to the petitioner.

Determination unanimously annulled with $50 costs and disbursements to the petitioner. Settle order on notice. All concur.

Waiver of Certification

It is hereby stipulated that the foregoing are correct copies of the notice of appeal to the Court of Appeals, judgment, order of reversal and opinion of the Appellate Division,

and all papers upon which said judgment order and opinion are founded, all of which are now on file in the office of the Clerk of the County of New York; and certification thereof pursuant to Sections 170 and 577 of the Civil Practice Act or otherwise are hereby waived.

Dated, New York, July 25th, 1938.

William C. Chanler, Corporation Counsel, Attorney for Defendant-Appellant. Newton K. Fox, Attorney for Petitioner-Respondent.

[fol. 125] IN COURT OF APPEALS OF NEW YORK

No. 1116

In the Matter of the Application of FELT & TARRANT MFG. Co., Petitioner-Respondent,

For an Order of Certiorari

against

JOSEPH D. MCGOLDRICK, Comptroller of the City of New York, Defendant-Appellant

NOTICE OF MOTION FOR REARGUMENT, TO AMEND THE OPINION, AND TO AMEND THE REMITTITUR OF THIS COURT

[fol. 126] SIRS:

Please Take Notice that upon the annexed affidavit of William C. Chanler, verified the 28th day of March, 1939, the papers on appeal, and all the proceedings heretofore had herein, the undersigned will move this Court at a session thereof to be held at the Court of Appeals Hall, Albany, New York, on Monday, the 3rd day of April, 1939, at 2 o'clock in the afternoon of that day or as soon thereafter as counsel can be heard, for an order

(a) recalling the remittitur herein;

(b) granting a reargument of the appeal herein, and upon such reargument being granted, reversing the order appealed from;

[fol. 127] (c) or, in the alternative, in the event the order appealed from be not reversed, amending the opinion of

this Court dated November 29, 1938, and the remittitur of this Court dated November 30, 1938, by striking out in each of them the words, "upon the authority of Matter of National Cash Register Co. v. Taylor (276 N. Y. 208)" and by inserting instead in each of them the words, "upon the sole ground that the City sales tax as here applied violates the Commerce Clause (Art. I, sec. 8, cl. 3) of the Constitution of the United States.";

and for such other and further relief as to the Court may seem just and proper.

Dated, New York, N. Y., March 28, 1939.

Yours, etc., William C. Chanler, Corporation Counsel of the City of New York, Attorney for Defendant-Appellant, Office and P. O. Address, Municipal Building, Borough of Manhattan, City of New York.

To Newton K. Fox, Esq., Attorney for Petitioner-Respondent, 42 Broadway, Borough of Manhattan, New York City, N. Y. John Ludden, Esq., Clerk of the Court of Appeals.

[fol. 128] In Court of Appeals of New York

[Title omitted]

Affidavit in Support of Motion for Reargument, etc.

State of New York,
County of New York, ss:

William C. Chanler, being duly sworn, deposes and says:

1. I am Corporation Counsel of the City of New York, and am familiar with the proceedings in this case.

2. The within appeal involved the validity under the Commerce Clause of the Federal Constitution, of Local Law No. 24 of 1934, the New York City sales tax, as applied to respondent's sales in New York City of a standard machine manufactured by it and known as a comptometer.

3. On November 29, 1938, this Court handed down a deci-
[fol. 129] sion which invalidated the City sales tax as applied to those sales. The memorandum opinion (279 N. Y. 678), and the remittitur affirming the order of the Appellate

Division, First Department, stated that the order appealed from was being affirmed "upon the authority of Matter of National Cash Register Co. v. Taylor (276 N. Y. 208)."

4. Reargument of the appeal is requested on the ground that supervening decisions of the United States Supreme Court, including one involving this very taxpayer, require reversal of this Court's decision. On January 30, 1939, the United States Supreme Court sustained a California tax as applied to Felt & Tarrant Mfg. Co., the respondent in the case at bar. The tax there involved is closely similar to the New York City sales tax and was upheld in connection with sales made in substantially the same way as in the present case. Felt & Tarrant Mfg. Co. v. Gallagher, 305 U. S. —, 59 Sup. Ct. 376 (January 30, 1939). Other decisions of the Supreme Court, handed down since this Court's decision in the case at bar, indicate that the City sales tax may be constitutionally applied to the transactions in question. J. Bacon & Sons v. Martin, 305 U. S. —, 59 Sup. Ct. 257 (January 3, 1939); Southern Pacific Company v. Gallagher, 305 U. S. —, 59 Sup. Ct. 389 (January 30, 1939); Pacific Telephone & Telegraph Co. v. Gallagher, 305 U. S. —, 59 Sup. Ct. 396 (January 30, 1939).

5. In the event reargument should be denied, or the original determination adhered to, the appellant desires to apply to the Supreme Court of the United States for a writ of certiorari to review this Court's decision. By order of Mr. Justice Stone dated February 11, 1939, the City's time [fol. 130] to petition the United States Supreme Court for certiorari was extended for a period of sixty days from February 27, 1939. The constitutionality of the City sales tax as applied to sales of this character is obviously of great importance to the City of New York. The present case, and its companion case, Matter of Compagnie Generale Transatlantique v. McGoldrick, in which a similar application is being made to this Court simultaneously herewith, are test cases. A great many proceedings which await the final outcome of these cases are pending before the appellant and in the Courts for hearing and determination. Large numbers of purchasers and sellers, and very considerable sums of money are involved.

6. In the two earlier cases of Matter of National Cash Register Co. v. Taylor, 276 N. Y. 208, certiorari denied, 303 U. S. 656 (March 28, 1938), and Matter of West Publishing

Co. v. Taylor, 276 N. Y. 535, certiorari denied, 303 U. S. 656 (March 28, 1938), it is possible that the denial of certiorari was based upon the Supreme Court's belief that the cases did not present an exclusively federal question. At least one commentator has regarded the Court's denial of certiorari in the National Cash Register case as attributable to the existence of a state question arising under the state enabling act. Lockhart, The Sales Tax in Interstate Commerce, 52 Harvard Law Review 617, 619, note 14 (1939).

7. Because the memorandum opinion and the remittitur in the present case state that the order of the Appellate Division is affirmed upon authority of the National Cash Register case, the Supreme Court might regard the situation presented here as identical with the National Cash Register [fol. 131] case. Accordingly, it might again deny certiorari in the belief that an exclusively federal question was not presented. In point of fact, in the present case the taxpayer did not urge in this Court any objection to the tax other than its invalidity under the Commerce Clause.

8. In order to avoid any doubt on the part of the Supreme Court that the case at bar was decided upon exclusively federal grounds, it is respectfully requested that the memorandum opinion and the remittitur be amended by striking out the words, "upon the authority of Matter of National Cash Register Co. v. Taylor (276 N. Y. 208)", and by inserting in their place the words, "upon the sole ground that the City Sales tax as here applied violates the Commerce Clause (Art. I, sec. 8, cl. 3) of the Constitution of the United States."

Wherefore, your deponent, on behalf of appellant, prays that an order be made granting the relief asked for in the annexed notice of motion.

William C. Chanler.

Sworn to before me this 28th day of March, 1939.
William C. McCutcheon, Notary Public, New York County.

[fol. 132] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

APPELLANT'S MEMORANDUM IN SUPPORT OF MOTION FOR REARGUMENT, ETC.

(1)

While recognizing that an application to this Court for reargument is seldom favored, we have here the unusual situation that a series of supervening decisions by the United States Supreme Court, one of which involves the very Felt & Tarrant Manufacturing Company which is the respondent in this case, require reconsideration by this Court of its previous decision. We refer to Felt & Tarrant Mfg. Co. v. Gallagher, 305 U. S. —, 59 Sup. Ct. 376 (January 30, 1939); Southern Pacific Co. v. Gallagher, 305 U. S. —, 59 Sup. Ct. 389 (January 30, 1939); Pacific Telephone & [fol. 133] Telegraph v. Gallagher, 305 U. S. —, 59 Sup. Ct. 396 (January 30, 1939); and J. Bacon & Sons v. Martin, 305 U. S. —, 59 Sup. Ct. 257 (January 3, 1939). Since the questions involved in the case at bar are questions of federal law, the decisions of the Supreme Court cited above, although subsequent in point of time to the decision in the case at bar, warrant reargument and reversal by this Court of its prior decision. Cf. City of New York v. Goldstein, 299 U. S. 522 (1937), where the Supreme Court granted reargument and reversed its previous determination by reason of a supervening decision of this Court on a point of state law.

The Felt & Tarrant case, supra, involved the liability of the present taxpayer under a California tax law. In that case, sales of comptometers were made by the taxpayers in substantially the same way as the New York City sales in the case at bar. The orders were solicited in California, but were submitted to, approved and accepted by the Felt & Tarrant company at its plant in Illinois, where the comptometers were manufactured. As soon as an order was accepted, a particular machine was appropriated for that purpose in the Felt & Tarrant company's shipping department in Illinois. Delivery was made by shipping the machines across state lines into California. At times the machines were forwarded directly to the purchasers; in other instances they were shipped to the vendor's California agent who then pro-

ceeded to make delivery. Invoices were sent out from the Illinois plant, and payment was made there. The Felt & Tarrant Company had not even qualified to do business in California.

The tax involved was the California "use" tax (Cal. Stat., [fol. 134] 1935, ch. 361, as amended by Cal. Stat., 1937, chs. 401, 671 and 683), which in every material particular parallels the New York City sales tax. The identity of the two taxes in all essentials is indicated by the following tabulation:

California Tax	City Tax
1. The tax is imposed on the purchaser at retail of merchandise purchased for consumption and not for resale.	1. The tax is imposed on the purchaser at retail of merchandise purchased for consumption and not for resale.
2. The tax is a given percentage of the sales price.	2. The tax is a given percentage of the sales price.
3. The tax is paid by the purchaser at the time of the sale.	3. The tax is paid by the purchaser at the time of the sale.
4. The tax is collected by the vendor, who files the returns.	4. The tax is collected by the vendor, who files the returns.
5. If the tax is not collected by the vendor, it is payable directly by the purchaser to the taxing official.	5. If the tax is not collected by the vendor, it is payable directly by the purchaser to the taxing official.
6. The tax is on a local event, i. e., "the exercise of any right or power * * * incident to the ownership of that property" other than resale.	6. The tax is on a local event, i. e., the "transfer of title or possession or both" for any purpose other than resale.

The fact that the California tax is termed a "use" tax, and the New York City tax a "sales" tax is a mere difference in words, not a difference in substance. "Use" in the California statute does not have its ordinary dictionary sense, but a special statutory sense which is designed to cover the exercise of any act of dominion over

property purchased. Through a special statutory definition [fol. 135] of terms, the California "use" tax effects a tax on purchases, as the foregoing tabulation plainly shows. Under the statute, the term "use" means "the exercise of any right or power over tangible personal property incident to the ownership of that property." In other words, when a purchaser receives title and possession of property for use rather than resale, he is "using" it within the meaning of the California statute. Southern Pacific Co. v. Gallagher, supra; Pacific Telephone & Telegraph Co. v. Gallagher, supra. Similarly, under the New York City tax, when a purchaser receives title and possession of property for use rather than resale, he is purchasing it at retail within the meaning of the City tax.

Under the California statute, no effort is made to tax the actual use of the articles purchased. The purpose is to tax the purchase, and nothing more. In essence, therefore, the transactions and activities taxed by the California tax are the same as those taxed by the New York City tax. The fact that one is called a "use" tax and the other a "sales" tax affords no basis for varying constitutional treatment. As stated by the Supreme Court in Southern Pacific Company v. Gallagher, supra, 305 U. S. —, 59 Sup. Ct. 389, 394:

"State taxes upon national commerce or its incidents do not depend for their validity *upon a choice of words* but upon the choice of the thing taxed." (Italics ours.)

It might be claimed that the California tax does not apply where the goods purchased are to be consumed solely outside the state. However, the New York City sales tax does not apply where the goods, although purchased in New [fol. 136] York City, are to be delivered outside of the City. Article 94 of the Comptroller's Regulations; Matter of C. G. Gunther's Sons v. McGoldrick, 279 N. Y. 148 (1938). Furthermore, this possible difference between the California tax and the New York City tax is irrelevant to the present case since there is no evidence in the record that any machine sold by the taxpayer was used outside of New York City. This taxpayer cannot invoke distinctions which might arise by reason of use outside the City, since here there is no claim or showing that the comptometers sold were used anywhere but in the City of New York. Obviously, respond-

ent is not the champion of any cause but its own. Henneford v. Silas Mason Co., 300 U. S. 577, 583 (1937). Moreover, this feature of the California tax is of no importance in determining its constitutionality, for the statute would have been valid without that limitation, it being well settled that a tax may be imposed upon goods imported into the state for use outside the state. Nashville, C. & St. L. Railway Co. v. Wallace, 288 U. S. 249 (1933); Edelman v. Boeing Air Transp., 289 U. S. 249 (1933).

The foregoing discussion has demonstrated the substantial identity of the California use tax and the City sales tax as applied to the transactions of the respondent. Accordingly, the decision of the Supreme Court sustaining the California tax on the Felt & Tarrant Company is a square authority for upholding the tax at bar.

Accord:

Southern Pacific Co. v. Gallagher, supra;
Pacific Telephone & Telegraph Co. v. Gallagher, supra.

[fol. 137] (2)

The constitutionality of the tax at bar is further demonstrated by the recent decision of the Supreme Court in J. Bacon & Sons v. Martin, supra. In that case the Court sustained a Kentucky tax on "the receipt of cosmetics in the state by any Kentucky retailer", as applied to articles purchased in other states and shipped into Kentucky to the retailer. The Court dismissed the taxpayer's appeal in a per curiam opinion, holding that the validity of the tax was so clear as not even to raise a substantial federal question. The Court thus held taxable the receipt by a retailer of cosmetics " 'when the articles are in his possession and when the merchant has unlimited control and dominion over the cosmetics' Martin v. J. Bacon & Sons, 268 Ky. 612, 105 S. W. (2d) 569, 572", despite the fact that the goods were shipped across state lines. Since a tax upon the receipt of merchandise shipped across state lines is constitutional, we believe that the New York City tax on the acquisition by purchase of merchandise shipped across state lines is likewise constitutional.

We submit that the decisions of the United States Supreme Court rendered subsequent to this Court's decision demonstrate that under the law as now determined by the

highest court, the City sales tax is valid and constitutional as applied in the case at bar.

(3)

In the event the order appealed from be not reversed, appellant seeks amendment of the opinion and remittitur so as to indicate clearly that the case was decided by this Court on exclusively federal grounds. The opinion and re-
[fol. 138] mittitur now state that the order appealed from was affirmed "upon the authority of National Cash Register Co. v. Taylor (276 N. Y. 208)". We do not believe that this Court intended to decide the case at bar on other than exclusively federal grounds. However, since in the National Cash Register case some question has arisen as to whether this Court decided the case in such a way as to present an exclusively federal question, and since doubt on that point may well have been the basis for the Supreme Court's denial of certiorari, in the case at bar we request that every possibility of doubt be removed by an amendment of the opinion and the remittitur.

Conclusion

We desire to stress the importance of inserting in the remittitur an indication that the federal question under the Commerce Clause was the sole ground for the decision against the validity of the tax. The objection to inserting the word "sole" which was present in Central Savings Bank v. City of New York, 280 N. Y. 9 (Feb. 21, 1939), is not present here. That case involved the construction of the due process clause, and the identity of phrasing between N. Y. Const., Art. I, § 6 and U. S. Const. XIV Amendment, precluded the use of the word "sole". In the instant case, no question as regards the Commerce Clause could arise under any but the U. S. Constitution.

The standard formula used where a litigant desires to appeal to the Supreme Court of the United States from a decision of this Court denying a federal right, is not pertinent to the instant case, where the federal right has not
[fol. 139] been denied but has, according to the contention of the party seeking a further review, been construed too generously in favor of the person asserting it.

The motion for reargument should be granted, and upon such reargument, the order appealed from reversed; or in

the alternative the remittitur should be amended to show that the decision raised a federal question under the Commerce Clause and no other questions.

March 28, 1939.

Respectfully submitted, William C. Chanler, Corporation Counsel, Attorney for Appellant. William C. Chanler, Sol Charles Levine, Jerome R. Hellerstein, of Counsel.

[fol. 140] Clerk's certificate to opinion omitted in printing.

[fol. 141] In Court of Appeals of New York

In the Matter of the Application of Felt & Tarrant Mfg. Co., Petitioner-Respondent,

for an order

against

Joseph D. McGoldrick, as Comptroller of the City of New York, Defendant-Appellant

Order affirmed, with costs, upon the authority of Matter of National Cash Register Co. v. Taylor (276 N. Y., 208). No opinion.

Concur: Crane, Ch. J., Lehman, O'Brien, Hubbs, Loughran, Finch and Rippey, JJ.

[fol. 142] Clerk's certificate to remittitur and orders omitted in printing.

[fol. 143] In Court of Appeals of New York

State of New York, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 29th day of November, in the year of our Lord one thousand nine hundred and thirty-eight, before the Judges of said Court.

Witness, the Hon. Frederick E. Crane, Chief Judge, Presiding. John Ludden, Clerk.

REMITTITUR—November 30, 1938

[fol. 144] In the Matter of the Application of FELT & TARRANT MFG. Co. for an Order of Certiorari vs. JOSEPH D. McGOLDRICK, Comptroller of the City of New York.

Be it Remembered, That on the 10th day of September, in the year of our Lord one thousand nine hundred and thirty-eight, Joseph D. McGoldrick, Comptroller of the City of New York, the appellant in this cause, came here unto the Court of Appeals, by William C. Chanler, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the Order and Judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Felt & Tarrant Mfg. Co., the respondent in said cause, afterwards appeared in said Court of Appeals by Newton K. Fox, its attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 145] Whereupon, The said Court of Appeals having heard this cause argued by Mr. William C. Chanler, of counsel for the appellant, and by Mr. Newton K. Fox, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs upon authority of Matter of National Cash Register Co. v. Taylor (276 N. Y. 208).

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

[fol. 146] And afterwards, to wit, on the 11th day of April, 1939, an order was duly made amending the remittitur herein, a certified copy of which order is hereto attached and made a part hereof.

Therefore, it is considered that the said order be affirmed with costs, &c., &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be

enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS

Clerk's Office

Albany, November 30, 1938.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal.)

[fol. 147] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

ORDER DENYING MOTION FOR REARGUMENT, ETC.—April 11, 1939

A motion for a reargument of the above cause having been heretofore made upon the part of the above named appellant herein and papers having been duly submitted thereon and due deliberation thereupon had, it is

Ordered, that the said motion be and the same hereby is denied.

The remittitur, however, is hereby amended by adding thereto after the words "upon the authority of Matter of National Cash Register Co. v. Taylor (276 N. Y. 208)" the following: "and upon the sole ground that the City Sales Tax Law as here applied violates the commerce clause (Article 1, Section 8, Clause 3) of the Constitution of the United States."

And, the Supreme Court, New York County, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy.

Rufus Kimball, Deputy Clerk. (Seal.)

[fol. 148] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

ORDER ON REMITTITUR FROM THE COURT OF APPEALS—December 12, 1938

The above named respondent having appealed to the Court of Appeals of the State of New York, by Notice of Appeal filed in said Court on the 10th day of September, 1938, from the order dated the 27th day of May, 1938, of the Appellate Division of the Supreme Court, in and for the First Judicial Department, which said order was duly entered and filed in the Office of the Clerk of said Appellate Division on the 2nd day of June, 1938, and said order together with the remittitur from the said Appellate Division was duly filed in the Office of the County Clerk, New York County, on the 8th day of June, 1938, to be proceeded upon according to law, wherein and whereby it was adjudged that [fol. 149] the Order of Certiorari herein signed by the Honorable Charles B. McLaughlin on the 10th day of March, 1937, and duly filed in the Office of the Clerk of New York County on the 10th day of March, 1937, be sustained, and that the determination of the Comptroller of the City of New York in so far and to the extent that the New York City sales tax was held applicable to the petitioner in the sum of $2,973.98 be annulled and that the respondent refund to the petitioner the sum of $2,973.98 with interest thereon at 6 per cent per annum from February 19, 1937, and pay to the petitioner the sum of $50 costs and disbursements of such proceedings; and the respondent having on the 10th day of September, 1938, further appealed to the said Court of Appeals from the judgment entered herein in favor of the petitioner and against the respondent for the sum of $3,453.07 with interest thereon at 6 per cent per annum until paid, which said judgment was duly entered and docketed on the 15th day of June, 1938, in the Office of the Clerk of the County of New York; and the said appeal having been duly argued in the said Court of Appeals, and, after due deliberation, the Court of Appeals having ordered and adjudged that the aforesaid order of the Appellate Division of the Supreme Court, First Judicial Department, and the aforesaid judgment be affirmed, with costs in the said Court of Appeals, and having further ordered that the record and the proceedings in said Court of Appeals be re-

mitted to the Supreme Court, New York County, there to be proceeded upon according to law,

Now on reading and filing the remittitur from the Court of Appeals herein and upon motion of Newton K. Fox, Esq., attorney for petitioner, it is

Ordered that the said order of the Court of Appeals be and the same hereby is made the order of this Court; and it is

[fol. 150] Further Ordered that the order of the Appellate Division and the judgment entered herein be and the same hereby are affirmed; and it is

Further Ordered that judgment be entered in favor of the petitioner and against the Comptroller of the City of New York for the costs and disbursements of petitioner in the proceedings on said appeal to the Court of Appeals.

Enter.

W. H. B., J. S. C.

[fol. 151] SUPREME COURT, NEW YORK COUNTY

In the Matter of the Appilcation of FELT & TARRANT MFG. Co., Petitioner,

For an Order of Certiorari

against

JOSEPH D. McGOLDRICK, Comptroller of the City of New York, Respondent

JUDGMENT

An order having been entered herein on the 12th day of December, 1938, by the Hon. William Harmon Black, Justice of the Supreme Court, on the order and the remittitur dated the 30th day of November, 1938, of the Court of Appeals of the State of New York, making the order of the said Court of Appeals the order of this Court.

Now on motion of Newton K. Fox, Esq., attorney for petitioner, it is

Ordered and Adjudged that the petitioner, Felt & Tarrant Mfg. Co., whose address is No. 1735 North Paulina Street, City of Chicago, State of Illinois; recover of and from Joseph D. McGoldrick, the Comptroller of the City of New York, whose address is the Municipal Building,

Borough of Manhattan, City and State of New York, the sum of $158.80 costs as taxed on said appeal to the Court of Appeals and that the petitioner have execution therefor.

Dated, New York, N. Y., December 15, 1938.

Archibald R. Watson, Clerk.

[fol. 152] Clerk's certificate to order omitted in printing.

[fol. 153] In Supreme Court of New York, County of New York

[Title omitted]

Order—April 26, 1939

The defendant-appellant having moved at the Court of Appeals for reargument of the appeal in the above proceeding and the Court of Appeals in an order dated the 11th day of April, 1939, and entered in the office of the Clerk of said Court on or about the same day having denied the motion but amended its remittitur, dated the 29th day of November, 1938 herein by adding thereto after the words "be and the same hereby is affirmed with costs" the following: "upon the sole ground that the City Sales Tax Law as here applied violates the Commerce Clause (Article 1, Section 8, Clause 3) of the Constitution of the United States",

Now upon reading a certified copy of said order of the Court of Appeals and upon filing the remittitur amended [fol. 154] as aforesaid, it is

Ordered that the said order of the Court of Appeals, dated the 11th day of April 1939, be and the same hereby is made the order of this Court.

Enter.

A. F., J. S. C.

[fol. 155] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 156] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRITS OF CERTIORARI

On consideration of the motions of counsel for petitioner in the above-entitled causes, and good cause therefore having been shown.

It is Now Here Ordered that the time within which petitions for writs of certiorari may be filed herein be, and the same is hereby, extended for a period of 60 days from February 27th, 1939.

(Signed) Harlan F. Stone, Associate Justice of the Supreme Court of the United States.

Dated, this 11th day of February, 1939.

[fol. 157] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRITS OF CERTIORARI

On consideration of the motions of counsel for petitioner in the above-entitled causes, and good cause therefor having been shown,

It is Now Here Ordered that the time within which petitions for writs of certiorari may be filed herein be, and the same is hereby, extended for a period of 60 days from March 15, 1939.

(Signed) Harlan F. Stone, Associate Justice of the Supreme Court of the United States.

Dated, this 19th day of April, 1939.

[fol. 158] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 5, 1939

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.